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UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

Resumed session

PROVISIONAL SUMMARY RECORD OF THE TWELFTH MEETING

held at the Neue Hofburg, Vienna, on
Thursday, 17 August 1978, at 3.30 p.m.

President: Mr. ZEMANEK (Austria)

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N.B. Participants wishing to have corrections to this provisional summary record incorporated in the final record of the meeting are requested to submit them in writing, preferably on a copy of the record itself, to the Official Records Editing Section, Room E.4108, Palais des Nations, Geneva, as soon as possible and not later than 30 September 1978

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CREDENTIALS OF REPRESENTATIVES TO THE RESUMED SESSION OF THE CONFERENCE: REPORT OF THE CREDENTIALS COMMITTEE (A/CONF.80/18/Rev.1)

Mr. SETTE CÂMARA (Brazil), Chairman of the Credentials Committee, introduced the report of the Credentials Committee (A/CONF.80/18/Rev.1). The nine members of the Committee, which had been established by the Conference at its 2nd plenary meeting, on 29 April 1977, in accordance with rule 4 of the rules of procedure (A/CONF.80/8), had met again on 16 August 1978 to examine the credentials of the representatives at the resumed session of the Conference. The Committee had had before it a memorandum by the Executive Secretary of the Conference dated 15 August 1978, concerning the status of the credentials of the representatives of the 94 States participating in the resumed session.

Paragraph 3 (a) of the report listed 74 States which had communicated formal credentials to the Executive Secretary, in accordance with rule 3 of the rules of procedure; those credentials had been issued either by the head of State or Government or by the Minister for Foreign Affairs. Paragraph 3 (b) listed six States the designation of whose representatives had been communicated to the Executive Secretary of the Conference by a cable from the Foreign Minister concerned. Paragraph 3 (c) listed 10 States the designation of whose representatives had been communicated to the Executive Secretary of the Conference by note verbale or letter from the Embassy or Permanent Mission of the State concerned. Paragraph 3 (d) listed four States from which no communications had been received, but whose representatives had assured the Executive Secretary of the Conference that communications would be forthcoming.

Since the preparation of the report, Switzerland, which was one of the States listed in paragraph 3 (d), and Saudi Arabia, which was one of the States listed in paragraph 3 (c), had submitted credentials to the Executive Secretary.

The Credentials Committee had decided to accept the credentials of the representatives referred to in paragraph 3 (a). On the proposal of its Chairman, it had decided, in the light of past practice and as an exceptional measure, to accept the communications received or to be received with regard to the delegations referred to in paragraph 3 (b), (c) and (d) in lieu of formal credentials, it being understood that such credentials would be submitted as soon as possible.

The representatives of three States participating in the work of the Credentials Committee had made statements which were recorded in paragraphs 5 and 6 of its report.

Mr. NATHAN (Israel) said that the Credentials Committee had accepted his delegation's credentials after confirming that they were formal credentials in accordance with rule 3 of the rules of procedure. His delegation therefore objected to the reservations made by the representative of Qatar, as recorded in paragraph 5 of the report under consideration (A/CONF.80/18/Rev.1). Such reservations were inadmissible; they were irrelevant and were designed solely to introduce politics into the work of the Conference.

Under rule 4 of the rules of procedure, the Credentials Committee had to examine the credentials of representatives and report to the Conference. That examination consisted of verifying that the credentials in question met the procedural requirements set forth in rule 3 of the rules of procedure. Reservations of a political nature, such as those which appeared in paragraph 5 of the report under consideration, were therefore altogether extraneous to the terms of reference of the Credentials Committee and had no place in its report.

His delegation was fully entitled to participate in the Conference by virtue of the invitation extended to the State of Israel by the Secretary-General of the United Nations in accordance with General Assembly resolution 31/18, in which the Secretary-General had been requested to invite all States to participate in the Conference. His delegation's right to participate in the work of the Conference could not therefore be questioned.

With regard to the details of the reservations made by the representative of Qatar, his delegation did not claim to represent "Palestine". It represented the State of Israel and the inhabitants of that State, whether Jews, Arabs or others. His delegation also rejected all the other allegations made in the reservations expressed in the Credentials Committee. The Government of Israel had already stated its views on those questions in the General Assembly, the Security Council and other bodies. In any case, the Conference was not competent to discuss those matters.

His delegation would not ask for paragraph 5 of the report under consideration to be put to the vote, but it categorically rejected the reservations recorded in it.

Mr. ZAKI (Sudan) said he endorsed the reservations made by the representative of Qatar in the Credentials Committee. His delegation's views concerning the credentials of the Israeli delegation had been recorded in the Committee's previous report (A/CONF.80/12, paragraph 5). The participation of Israel in the Conference should not be considered as implying recognition on the part of the Sudan.

Mr. DOGAN (Turkey) said that the leader of the Turkish community in Cyprus had sent a letter to the President of the Conference dealing with certain aspects of the question of the representation of Cyprus. It would be desirable for copies of that letter to be made available to interested delegations.

Mr. ROVINE (United States of America) said that his delegation deeply regretted that political considerations concerning Israel and Cyprus had been introduced into the debate. As his delegation had already stated, the Credentials Committee should confine itself to ascertaining whether the credentials which it examined were in order; it was not empowered to discuss questions such as those dealt with in paragraph 5 of the report. It was to be hoped that in the future, such questions would not be raised in credentials committees.

Mr. AL-ROUME (Saudi Arabia) said he shared the views expressed by the representative of Qatar in the Credentials Committee. Israel could not represent the Arab population of the occupied territories.

The PRESIDENT said that, if there was no objection, he would take it that the Conference agreed to adopt the report of the Credentials Committee (A/CONF.80/18/Rev.1).

It was so decided.

CONSIDERATION OF THE QUESTION OF SUCCESSION OF STATES IN RESPECT OF TREATIES IN ACCORDANCE WITH RESOLUTIONS 3496 (XXX) AND 31/18 ADOPTED BY THE GENERAL ASSEMBLY ON 15 DECEMBER 1975 AND 24 NOVEMBER 1976 (item 11 of the agenda) (continued)

Draft resolution A/CONF.80/L.1

The PRESIDENT said that, since the issue of document A/CONF.80/L.1, a number of States had joined the sponsors of the draft resolution which it contained.

Mr. SIDDIQUI (United Nations Council for Namibia), introducing draft resolution A/CONF.80/L.1 on behalf of the sponsors, noted that at the first session of the Conference, the delegation of the United Nations Council for Namibia had expressed doubts about certain articles and had submitted a proposal (A/CONF.80/DC.13) for the inclusion in the preamble to the convention of a paragraph stating that the Conference took into account General Assembly resolution 2145 (XXI), by which the Assembly had terminated the Mandate of South Africa over Namibia and had assumed direct responsibility for the Territory until its independence.

At the 38th meeting of the Committee of the Whole (A/CONF.80/C.1/SR.38, pp. 22-25), on 1 August 1978, the delegation of the United Nations Council for Namibia had pressed its proposal; it had referred to recent events related to Namibia and had adduced further reasons why the Conference, together with other organs of the international community, should help to protect the legitimate interests of the international Territory of Namibia and of its people.

A number of delegations had subsequently assured the Council's delegation of their full support, but had suggested that a resolution having the same objectives as the Council's proposal would better serve the interests of Namibia and of the Conference. It had also been pointed out that if Namibia became an independent State in the near future, the preamble to the convention would be anachronistic. After consulting several other delegations from various regional groups, the Council's delegation had realized that they shared that view and had therefore decided to withdraw its proposal concerning the preamble to the convention (A/CONF.80/DC.13) and to replace it by draft resolution A/CONF.80/L.1.

In the preamble to that [illegible]ion, reference was made to resolutions of the General Assembly and the [illegible]ncil concerning the question of Namibia and to the opinion of the Inter[illegible]rt of Justice, in order to stress the illegal nature of the occupation [illegible]ory of Namibia by the racist régime of South Africa, [illegible] universal [illegible] and its consequences. The draft resolution made no attempt to intro[illegible] elements, but merely reaffirmed the will of the international community [illegible]sed in various General Assembly and Security Council resolu[illegible] That reaffirmation was particularly necessary at the present time, in order t[illegible] that the entire international community supported the people of Namibia and was [illegible]sympathy with its struggle against the maintenance of the illegal occupation of its territory by South Africa.

It would be seen from the operative part of the draft resolution that, in view of the illegal character of the occupation of the Territory of Namibia by South Africa after 27 October 1966 and that all the relevant articles of the future convention must be interpreted in conformity with United Nations resolutions on the question of Namibia.

That point of view had also been upheld by the world's supreme judicial organ, the International Court of Justice, which had stated categorically in its advisory opinion of 21 June 1971 that member States were under obligation to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purported to act on behalf of or concerning Namibia. With respect to existing bilateral treaties, member States must abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involved active intergovernmental co-operation. Member States were under obligation to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia, to abstain from sending consular agents to Namibia, and to withdraw any such agents already there. They should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa did not imply any recognition of its authority with regard to Namibia. Finally, member States were under obligation to abstain from

entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which might entrench its authority over the Territory.

It followed from those statements of the International Court of Justice that the termination of the Mandate and the declaration of the illegality of South Africa's presence in Namibia were opposable to all States in the sense of barring erga omnes the legality of a situation which was maintained in violation of international law. Not only were all member States under obligation to abstain from all treaty relations with South Africa concerning the territory of Namibia, but no treaty or provision of that kind could have force of law or could be invoked or applied by any party. That was precisely the aim of the proposal of the United Nations Council for Namibia that the Conference should declare South Africa not to be the predecessor State in the case of Namibia. The draft resolution therefore confirmed the position taken by the States Members of the United Nations, as supported by its supreme judicial organ.

Mr. OSMAN (Somalia) emphasized the importance of the draft resolution, not only to his own delegation, but to all the delegations of non-aligned and other freedom-loving countries. The draft was intended to assist the people of Namibia in its legitimate struggle against the racist régime of South Africa by reaffirming the territorial integrity and unity of Namibia in accordance with the relevant United Nations resolutions.

His delegation shared the concern of the United Nations Council for Namibia with regard to the exceptions to the application of the "clean slate" principle, in view of the difficulties that such exceptions would entail for the people of that Territory, who were victims of dismemberment and illegal colonial occupation. His delegation wished to express its continued sense of solidarity with the Namibian people.

The draft resolution constituted a reaffirmation of various resolutions and decisions whereby the General Assembly had demanded the total and unconditional withdrawal of South Africa from the Territory of Namibia and had declared that Walvis Bay formed an integral part of Namibia. The draft resolution should enable the future independent State of Namibia to benefit from the "clean slate" principle and preclude exceptions to that principle which might be prejudicial to Namibia in view of the current controversy about Walvis Bay, an area which

historically and legally formed an integral part of Namibia and must continue to do so. Once Namibia became independent, it could not succeed to obligations arising out of territorial arrangements made by a colonial régime and designed to serve and safeguard the interests of South Africa to the detriment of those of the people of Namibia.

Sir Ian SINCLAIR (United Kingdom) pointed out that, under General Assembly resolution 3496 (XXX), the task of the Conference was to "consider the draft articles on succession of States in respect of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate". It was important to bear in mind the terms of reference of the Conference at a time when its work was coming to an end and when it had before it draft resolution A/CONF.80/L.1.

His delegation was aware that the future of Namibia was a matter of concern to all delegations, especially those of African countries. In the Security Council, the United Kingdom had joined with other States in trying to find a solution to that problem, which was one of the most difficult currently facing the international community. The Security Council had recently adopted two resolutions which held out hope of a rapid and internationally acceptable solution to the problem. In that connexion, the United Kingdom Secretary of State for Foreign and Commonwealth Affairs had expressed before the Security Council his gratification at the fact that his Government, together with those of Canada, France, the Federal Republic of Germany and the United States of America, had succeeded in helping Africa to solve one of its most difficult problems; it had been due to the goodwill of all the parties and to the wisdom of the "front-line" States that a peaceful and internationally acceptable solution had been found. The Security Council was still considering the question of Namibia.

In those circumstances, his delegation considered that the resolution under consideration fell outside the terms of reference of the Conference, whose task was to prepare a convention on succession of States in respect of treaties, not to adopt resolutions on individual cases of succession. His delegation's objection was therefore one of principle: it did not contest the right of the Conference to examine such a draft resolution, but its right to adopt it. That was why the United Kingdom delegation could not and would not participate in a vote or in any

other procedure for the adoption of resolution A/CONF.80/L.1. Moreover, even if it had considered that the Conference was competent to adopt the draft resolution, the wording of that text, especially of the first operative paragraph and, even more so, of the second operative paragraph, would have caused it some difficulty.

Like the African delegations, the United Kingdom delegation hoped that Namibia, on attaining independence, would be allowed to benefit from the application of the "clean slate" principle. As a newly independent State, Namibia would doubtless have to resolve problems of succession in respect of treaty obligations, but it did not seem right to prejudge the position of the independent state of Namibia on that subject.

Mr. ROVINE (United States of America) said that the United States Government had been endeavouring for some time to facilitate Namibia's accession to independence. Thus, together with Canada, France, the Federal Republic of Germany and the United Kingdom, the United States was negotiating with South Africa on the question of Namibia. His delegation naturally understood the underlying motives for the draft resolution under discussion and, indeed, only the last sentence of that text presented it with any difficulty. As he saw it, the terms of reference of the Conference were to consider the draft articles prepared by the International Law Commission and to adopt a convention on succession of States in respect of treaties. It had surely not been the intention of the General Assembly, in convening the Conference, to authorize it to take decisions on individual cases. The fact that Namibia was a special case did not mean that the Conference could exceed its terms of reference. Moreover, the adoption of the draft resolution might be prejudicial to the efforts of the Security Council, which was considering the question. His delegation therefore regretted that it could not take part in a vote or any other decision on the draft resolution.

Mr. TREVIRANUS (Federal Republic of Germany) said it was self-evident that all delegations without exception were anxious to see a sovereign and independent Namibia entering the international arena in the near future. His country was contributing to the efforts being made to that end by the Security Council, of which it was currently a member. He did not believe, however, that a codification conference to which the General Assembly had entrusted a specific task was the appropriate forum in which to consider a question with which several

United Nations organs were already dealing. The Conference should not take decisions on questions which did not fall within its competence or seek solutions to specific problems, however serious they might be. His delegation did not question the right of the majority to make a declaration on the subject of Namibia or to adopt the draft resolution in question, but for its part it was unfortunately unable to participate in the vote on the text or in its adoption by any other means.

Mr. DOGAN (Turkey) said he was in favour of draft resolution A/CONF.80/L.1.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said he unreservedly supported the text under consideration. The Conference was competent to examine and adopt the draft before it. There could be no doubt that the presence of South Africa in Namibia was illegal. That illegal occupation must therefore be brought to an end and respect for the territorial integrity of Namibia must be ensured. His delegation would vote for the draft resolution if it was put to the vote.

Mr. DUCULESCU (Romania) said he endorsed the draft resolution, being convinced that the international community should support the struggle of the Namibian people by affording it legal, moral and political assistance. His delegation did not agree with the view taken by the delegations of the United Kingdom, the United States and the Federal Republic of Germany, since although the international community was rightly making efforts at the political level to facilitate Namibia's accession to independence, it should not neglect the legal means available. Thus, the representative of the United Nations Council for Namibia had demonstrated in his statement that certain articles of the convention could not apply to Namibia, whose situation exhibited special characteristics and called for a separate solution. There was no predecessor State in the case of Namibia; South Africa merely exercised de facto power over the Territory, and that against the will of the international community. South Africa's attempts to seize Walvis Bay threatened the territorial integrity of Namibia. That was why the sponsors of the draft resolution were proposing that South Africa should not be recognized as the predecessor State of the future independent State of Namibia. His delegation considered that the draft resolution was well-founded, in view of the legal characteristics of the case and would therefore vote for the draft, which contributed to the development of international law and to the solution of the particular problems of Namibia.

Mr. KOROMA (Sierra Leone) said that, in the opinion of his delegation, which was one of the sponsors of draft resolution A/CONF.80/L.1, the Conference should work together with other United Nations organs and the international community to protect and maintain the legitimate interests of the international Territory of Namibia and of the Namibian people. In the draft resolution, the sponsors cited important resolutions of the General Assembly, namely resolutions 2145 (XXI) and 2248 (S-V), as well as the advisory opinion handed down in 1971 by the International Court of Justice, which showed that Member States should put an end to the illegal situation obtaining in Namibia. Moreover, in its resolution 276 (1970), the Security Council had reaffirmed the General Assembly's decision to terminate the Mandate of South Africa over the territory of Namibia and to assume direct responsibility for the Territory until its independence. When taking that decision, the Security Council had also declared that the presence of the South African authorities in Namibia was illegal and that all acts taken by the Government of South Africa concerning Namibia were illegal and invalid. In its resolution 283 (1970 the Security Council had called upon all States to take the necessary measures. In its advisory opinion of 1971, the International Court of Justice had declared that States Members of the United Nations should recognize the illegality of the presence of South Africa in Namibia. The Court had confined itself to giving advice on those dealings with the Government of South Africa which, under the Charter of the United Nations and general international law, should be considered as inconsistent with the declaration of the Security Council. That applied in particular to treaty relations in all cases in which the Government of South Africa purported to act on behalf of or concerning Namibia.

The draft convention was intended to govern the transfer of rights and obligations arising from treaties in the case of the emergence of a newly independent State or of the uniting or separation of States. The necessity of giving newly independent States the option of choosing from among the treaties of the predecessor State those which they would maintain in force lay at the root of the draft convention, since no country could be expected to accept commitments entered into by another State without first being able to express its own will. As the representative of Brazil had stated at the 1977 session, a newly independent State should be born free, should be able to benefit from the "clean slate" principle and should not be bound by unjust agreements. That held true of Namibia, which could not be deprived of its only port, Walvis Bay, an integral part of its territory.

In the light of those considerations, it was only natural, for legal reasons and in a spirit of justice, to provide that in the case of Namibia the relevant articles of the convention should be interpreted in conformity with the relevant United Nations resolutions, under which South Africa could not be regarded as the predecessor State of Namibia after 1966.

Mr. MUSEUX (France) said that he fully shared the views expressed by the representatives of the United Kingdom, the United States of America and the Federal Republic of Germany, which seemed eminently sensible. His Government, too, was participating in the negotiations on the question of Namibia with a view to reaching a speedy solution so that Namibia could achieve independence as soon as possible. However, his delegation felt that it would be unfair to prejudge decisions of a future Namibian Government, and that the Conference should not take a decision on the draft resolution. In order to ensure the proper functioning of the Conference and respect for the credentials given by Governments to their representatives, it was important that those representatives should not exceed their terms of reference and encroach on the work of the political bodies that were dealing with the question, in particular the Security Council.

For those reasons, his delegation would be unable to participate in the decision on the draft resolution.

Mr. de BLOIS (Canada) said that the draft resolution under discussion raised a number of problems: it sought to interpret a convention that the Conference had not yet adopted and the terms of reference of the Canadian delegation to the Conference did not cover consideration of the draft resolution. Furthermore, his country was playing a part in other bodies that were dealing with the question of Namibia. For those reasons, his delegation would not participate in any decision by the Conference concerning the draft resolution.

Mr. MAHUNDA (United Republic of Tanzania) said that his delegation fully supported the draft resolution before the Conference, being one of its sponsors. As a "front-line" State, his country had always regarded the Namibian people's struggle as its own struggle and it would continue to make sacrifices until Namibia had attained its independence. Since the draft resolution merely put forward the international community's view of the Namibian question, his delegation could not understand why certain delegations which, in other bodies, were endeavouring to solve the Namibian problem, should find the draft resolution difficult to accept.

As far as his delegation was concerned, Namibia was a United Nations Territory, because the United Nations had terminated South Africa's Mandate over that Territory. The last operative paragraph was a logical consequence of the status of Namibia and should not cause any difficulty.

Mr. VREEDZAAM (Surinam) said that since the Conference was competent to define what was understood by "predecessor State" and "successor State", it was also competent to declare that South Africa was not the predecessor State of the future independent State of Namibia, because it was occupying the territory of Namibia illegally. His delegation was a sponsor of the draft resolution under discussion.

Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that South Africa's illegal occupation of the Territory of Namibia was one of the major preoccupations of the United Nations and it was therefore essential for the Conference to give its opinion on that vital problem. He supported draft resolution A/CONF.80/L.1, which would help the Namibian people in its fight for independence.

Mr. PAPADOPOULOS (Cyprus) said he wished to reserve the right to reply at a later stage to the statement made by the representative of Turkey concerning the report of the Credentials Committee (A/CONF.80/18/Rev.1) which contained no reservation relating to the credentials of the delegation of Cyprus.

His delegation wholeheartedly supported draft resolution A/CONF.80/L.1, because it considered that South Africa should end its illegal occupation of Namibia and it attached great importance to the implementation of the relevant resolutions of the United Nations, in particular Security Council resolutions 385 (1976), which had reaffirmed the territorial integrity and unity of Namibia, and 432 (1978) in which the Security Council had taken note of paragraph 7 of General Assembly resolution 32/9 D (1977), declaring Walvis Bay to be an integral part of Namibia. His delegation hoped that the statements which had been made in support of those resolutions were not empty words, but demonstrated a sincere desire to apply the principles of international law which were involved. His delegation firmly supported those principles and would therefore vote in favour of the draft resolution on Namibia.

Mr. JOMARD (Iraq) said he supported draft resolution A/CONF.80/L.1, for the reasons given by the representatives of Somalia and Sierra Leone.

Mr. STUTTERHEIM (Netherlands) said that, for the reasons given by the United Kingdom representative, his delegation would not participate in the vote on draft resolution A/CONF.80/L.1. He was sure, however, that Namibia would have the benefit of the "clean slate" principle.

Mr. BENDJFALLAH (Algeria) said that his country had always supported the cause of peoples struggling for self-determination and had declared itself in favour of the territorial integrity of Namibia and the freeing of its people from the racist yoke. In his opinion, the Conference was competent to deal with the Namibian problem and Namibia ought to benefit from the "clean slate" principle. He wholeheartedly supported draft resolution A/CONF.80/L.1 and appealed to members of the Conference to adopt it by an overwhelming majority.

Mr. de OLIVEIRA (Angola) said that his country, which was one of the "front-line" States, had always supported the Namibian people and would continue to give it unqualified support in face of the acts of aggression perpetrated against it by South Africa. Since the international community recognized that South Africa's presence on Namibian territory was illegal, he found it hard to understand why certain delegations could not support draft resolution A/CONF.80/L.1. He, too, appealed for the draft resolution to be adopted by a very large majority.

Mr. YACOUBA (Niger) said that, while the task of the Conference was to prepare an international convention on succession of States in respect of treaties, it had a duty to examine all aspects of the question. The situation of Namibia might pose a difficult problem when the Territory became independent. The sponsors of draft resolution A/CONF.80/L.1 had decided, in a spirit of conciliation, not to insist on the inclusion of an article on Namibia in the draft convention. He was surprised, therefore, that their initiative had not met with a response from certain delegations. He requested a roll-call vote on draft resolution A/CONF.80/L.1.

Mr. MASUD (Pakistan) said that the view that the Conference was not competent to examine or adopt draft resolution A/CONF.80/L.1 was based on a very narrow interpretation of the Conference's terms of reference. In his opinion, the draft resolution was relevant to the subject being dealt with by the Conference and was consistent with the advisory opinion of the International Court of Justice. The Conference was therefore perfectly competent to consider the draft resolution and should adopt it.

Mr. RITTER (Switzerland) said that his delegation would abstain in the vote on draft resolution A/CONF.80/L.1 because his country was not a Member of the United Nations and did not, therefore, feel able to pronounce on a question deriving from resolutions in the adoption of which it had not participated. That position was consistent with the position which his delegation had taken in 1977 concerning the request of the United Nations Council for Namibia for active participation in the Conference. That position in no way affected his country's sympathetic attitude towards the aspirations of the Namibian people.

Mr. ABOU-ALI (Egypt) expressed his unqualified support for the terms and content of draft resolution A/CONF.80/L.1. He believed that the Conference was competent to consider and adopt the draft resolution, since the resolution concerned the interpretation to be given to the provisions of the convention in the case of an independent Namibia, in the light of the relevant resolutions of the United Nations and the advisory opinion of the International Court of Justice. In his opinion, a Conference which had been given the task of preparing a convention on succession of States in respect of treaties was competent to express its opinion on the application of that convention in a specific case which was of great importance at the international level and more especially in the African context.

Mr. MAIGA (Mali) said there could be no doubt that draft resolution A/CONF.80/L.1, of which his delegation was a sponsor, fell within the terms of reference assigned to the Conference by the General Assembly. He pointed out that it was the very countries which had advocated resort to the International Court of Justice for the settlement of disputes concerning the interpretation of the convention that were now refusing to abide by the advisory opinion of the Court in the case of Namibia.

Mr. RANJEVA (Madagascar) expressed the view that, contrary to the assertions of certain delegations, draft resolution A/CONF.80/L.1 fell within the terms of reference of the Conference, since the Conference had to study all aspects of the problem of succession of States, of which the question of Namibia was a specific manifestation. The Conference could not, therefore, evade that problem without failing in its responsibilities. The sponsors of the draft resolution had wished to include an article on Namibia in the body of the draft convention, but, in a spirit of compromise, had agreed merely to submit a draft resolution.

Since, according to the text of article 6 adopted by the Committee of the Whole, the future convention applied only "to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations", he did not see how South Africa could possibly be regarded as the predecessor State of Namibia.

Mr. KONADU-YIADOM (Ghana) said he considered that the Conference was competent to examine and adopt draft resolution A/CONF.80/L.1.

Mr. FARAHAT (Qatar) said that he, too, considered the Conference to be competent to adopt a draft resolution on Namibia, since all nations should co-operate in putting an end to the illegal occupation of Namibia by South Africa. He unreservedly supported draft resolution A/CONF.80/L.1, for it seemed obvious to him that South Africa could not be the predecessor State in the case of Namibia.

Mr. DIENG (Senegal) thanked the representative of the United Nations Council for Namibia for his clear and comprehensive analysis of the situation. He was surprised that some delegations could still doubt the competence of the Conference to consider draft resolution A/CONF.80/L.1. In his view, the legal arguments adduced by those delegations in fact concealed certain specific interests, since the draft resolution clearly fell within the competence of the Conference, and the fact that the Security Council was dealing with the question of Namibia did not preclude the Conference from taking a decision on it. He therefore appealed to delegations to adopt the draft resolution by an overwhelming majority.

Mr AHIPEAUD (Ivory Coast) said he supported draft resolution A/CONF.80/L.1, of which his delegation was a sponsor.

Mr. MADINGA (Swaziland) said that he, too, supported draft resolution A/CONF.80/L.1, which reaffirmed the territorial integrity of Namibia. In his opinion, the draft resolution clearly fell within the terms of reference of the Conference.

The PRESIDENT announced that the United Arab Emirates, Indonesia, Iraq and Tunisia had asked to be included among the sponsors of draft resolution A/CONF.80/L.1.

The PRESIDENT put draft resolution A/CONF.80/L.1 to the vote.

At the request of the representative of the Niger, the vote was taken by roll-call.

Mali, having been drawn by lot by the President, was called upon to vote first.

In favour: Algeria, Angola, Argentina, Australia, Austria, Brazil, Bulgaria, Burundi, Byelorussian SSR, Chile, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Egypt, Ethiopia, Finland, German Democratic Republic, Ghana, Guyana, Hungary, India, Indonesia, Iraq, Ivory Coast, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, Mauritania, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Qatar, Republic of Korea, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sudan, Surinam, Swaziland, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Venezuela, Yemen, Yugoslavia, Zaire.

Against: None.

Abstaining: Belgium, Ireland, Italy, Japan, Portugal, Switzerland.

Draft resolution A/CONF.80/L.1 was adopted by 73 votes to none, with 6 abstentions.

Mr. GIL-MASSA (Mexico) said that his delegation had unfortunately been called away urgently by the Conference secretariat and had thus been momentarily absent when the draft resolution had been put to the vote. If it had been present, it would have voted in favour of the draft resolution; it asked that its statement on Mexico's position should be reflected in the summary record.

Mr. NAKAGAWA (Japan) said that his delegation had abstained in the vote, despite its sympathy for Namibia, because it was not convinced that it was for the Conference to take a decision on a specific case of succession of States.

Mr. HERNDL (Austria) said that his delegation had voted in favour of the draft resolution to mark its approval of the operative part of the text, although it had some doubts concerning the competence of the Conference to deal with the question and concerning the advisability of adopting such a resolution, which in a way prejudged the decision that Namibia would take when it became independent. Austria hoped that Namibia would become an independent and sovereign State in the very near future.

He wished to point out that the position taken by Austria in the General Assembly on paragraph 7 of resolution 32/9D (1977), cited in the last preambular paragraph of the resolution just adopted, remained unchanged.

Mr. de VIDTS (Belgium), noting that his country had voted in favour of General Assembly resolution 2145 (XXI) of 27 October 1966, said that the Belgian delegation had abstained in the vote on the resolution concerning Namibia because it was not convinced that the Conference should act as surrogate for the future independent State of Namibia and because it considered that that future State alone should decide whether to apply, in its own case, the existing practice in the matter of succession of States or the provisions of the Convention if it had entered into force. There had therefore been no call for the Conference to take a decision on the question. The resolution that had just been adopted in no way altered the prerogatives of the future State of Namibia, which Belgium wished every success in asserting itself in the area of international relations on the basis of respect for its new sovereignty.

Mr. MARESCA (Italy) said that Italy had always adopted a favourable attitude towards Namibia, whose independence would serve to enrich the international community.

The Italian delegation had abstained in the vote that had just been taken because it considered that the Conference, which had been convened to draw up a convention on succession of States in respect of treaties, was not competent to take a decision on the question of Namibia and that its adoption of a position constituted interference in the affairs of a future State which should be the sole master of its own fate.

Mr. SIDDIQUI (United Nations Council for Namibia) expressed his gratitude to the Conference for having adopted the resolution on Namibia.

ORGANIZATION OF WORK

The PRESIDENT, observing that the Conference would obviously be unable to complete its work on 18 August, as scheduled, suggested that the session be extended until Wednesday, 23 August 1978, inclusive, subject to any further decision that might be taken if necessary.

That suggestion was adopted.

The meeting rose at 5.50 p.m.

UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL
For participants only
A/CONF.80/SR.13
30 August 1978
ENGLISH
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UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

Resumed session

PROVISIONAL SUMMARY RECORD OF THE THIRTEENTH MEETING

held at the Neue Hofburg, Vienna,
on Monday, 21 August 1978, at 3.20 p.m.

President: Mr. ZEMANEK (Austria)

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N.B. Participants wishing to have corrections to this provisional summary record incorporated in the final record of the meeting are requested to submit them in writing, preferably on a copy of the record itself, to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva, as soon as possible and not later than 30 September 1978.

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CONSIDERATION OF THE QUESTION OF SUCCESSION OF STATES IN RESPECT OF TREATIES IN ACCORDANCE WITH RESOLUTIONS 3496 (XXX) and 31/18 ADOPTED BY THE GENERAL ASSEMBLY ON 15 DECEMBER 1975 and 24 NOVEMBER 1976 (item 11 of the agenda) (continued) (A/CONF.80/4 and 5 and Corr.1; A/CONF.80/WP.1 and WP.2)

Titles and texts of articles 30 to 39 adopted by the Committee of the Whole (A/CONF.80/20)

Article 30 (Effects of a uniting of States in respect of treaties in force at the date of the succession of States)

Article 30 was adopted without a vote.

Mr. FLEISCHHAUER (Federal Republic of Germany), referring to article 30 and speaking on behalf of his own delegation and of the other delegations representing States members of the European Communities at the Conference, said that the provisions of the draft articles on succession of States in respect of treaties did not apply to the participation of States in the European Communities. That view had also been taken by the International Law Commission, as was clear from its 1974 report (A/CONF.80/4, paras. 65 to 69 and commentary on article 30, paragraph 4).

Article 31 (Effects of a uniting of States in respect of treaties not in force at the date of the succession of States)

Article 31 was adopted without a vote.

Article 32 (Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval)

Article 32 was adopted without a vote.

Article 33 (Succession of States in cases of separation of parts of a State)

Mr. RITTER (Switzerland) requested that in view of the lengthy debate on article 33 and its importance in the convention as a whole, the article should be put to the vote.

After a procedural discussion in which Sir Ian SINCLAIR (United Kingdom), Mr. MAIGA (Mali), Mr. MUDHO (Kenya), and Mr. PERE (France) took part, the PRESIDENT put article 33 to the vote.

Article 33 was adopted by 68 votes to 5.

Mr. MUDHO (Kenya) said that his delegation would have voted for article 33 if it had been able to participate in the vote.

Article 34 (Position if a State continues after separation of part of its territory)

Mr. PERE (France) pointed out, in connexion with article 34, that the position of the predecessor State was regulated only in part IV of the draft convention. He regretted that it had not been defined in greater detail in the cases referred to in part III of the draft. Consequently, the French delegation could not join the consensus on article 34, but would not oppose it.

Article 34 was adopted without a vote.

Article 35 (Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State)

Article 35 was adopted without a vote.

Article 36 (Participation in cases of separation of parts of a State in treaties signed by the predecessor State subject to ratification, acceptance or approval)

Article 36 was adopted without a vote.

Article 37 (Notifications)

Article 37 was adopted without a vote.

Article 38 (Cases of State responsibility and outbreak of hostilities)

Article 38 was adopted without a vote.

Article 39 (Cases of military occupation)

Article 39 was adopted without a vote.

Report of the Drafting Committee on the final clauses (A/CONF.80/19)

Article [I] (Signature)

Mr. YASSEEN (Chairman of the Drafting Committee), introducing the report of the Drafting Committee on the final clauses of the convention, reminded the Conference that at its twenty-first meeting, on 20 April 1977, the Committee of the Whole had instructed the Drafting Committee to prepare texts of the final clauses and to submit them direct to the Conference. The Drafting Committee had had before it a number of proposals by delegations, and two working documents by the Secretariat, one of which contained a comparative table of the final clauses appearing in the most recent codification conventions. After considering those documents, the Drafting Committee had adopted the draft final clauses circulated under the symbol A/CONF.80/19. The numbering of the articles was provisional.

With regard to article [I], the Drafting Committee had used the formulation which appeared in the two most recent codification conventions, and particularly in article 81 of the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, where the expression "all States" was used. The two dates contained in the article had been selected by the method used in the case of the 1975 Convention, i.e. they were the last days of the sixth and twelfth months from the month following the adoption of the Convention.

Article [I] was adopted without a vote.

Article [II] (Ratification)

Mr. YASSEEN (Chairman of the Drafting Committee) pointed out that article [II] contained the formulation that had been used in all codification conventions, particularly in article 49 of the Convention on Diplomatic Relations, article 51 of the Convention on Special Missions, and article 82 of the Convention on the Law of Treaties. It had been proposed that the words "acceptance or approval" should be added to the title and in the text of the article; but the Drafting Committee had felt that there was no reason to depart from the established model, since the term "ratification" in the context of the convention implied acceptance and approval.

Mr. K'HABOUJI (Zaire) said that his delegation would submit written comments on article [I] which the Conference had just adopted. With regard to article [II], he observed that no provision in the convention indicated who its depositary was to be. Article [II] mentioned the Secretary-General, but the words "who shall be its depositary" should be added to the end of the article.

Mr. MAIGA (Mali) said that the representative of Zaire had been right to raise the question of the depositary; but he felt that the article was already sufficiently clear and invited the representative of Zaire to withdraw his amendment in order to save time.

Mr. YASSEEN (Chairman of the Drafting Committee) said that he understood the point made by the representative of Zaire, but thought that article [II] was quite clear, since the instruments of ratification could not be deposited with any authority other than the depositary. Also, the article contained a formulation already used in other codification conventions.

Sir Ian SINCLAIR (United Kingdom) said that his delegation would have some difficulty in departing from the established precedents, and that the addition of the words proposed by the representative of Zaire might raise doubts regarding the interpretation of conventions which already contained that formulation.

Mr. K'HABOUJI (Zaire) said that his proposal was intended to make the text of article [II] more clear, and he recalled that the Convention on the Carriage of Goods by Sea adopted at Hamburg in March 1978 contained that very phrase. He nevertheless withdrew his amendment to article [II].

Article [II] was adopted without a vote.

Article [III] (Accession)

Mr. YASSEEN (Chairman of the Drafting Committee) said that article [III] was based on article 83 of the Convention on the Representation of States in their Relations with International Organizations of a Universal Character.

Article [III] was adopted without a vote.

Article [IV] (Entry into force)

Mr. YASSEEN (Chairman of the Drafting Committee) said that in article [IV] the Drafting Committee had adopted the formulation used in all codification conventions. With regard to the number of instruments of ratification required for the entry into force of the convention, the majority of the members of the Drafting Committee had favoured 10, in view of the characteristics of the Convention, which was not of interest to all States in the same degree. A minority of the members of the Drafting Committee would have preferred a minimum of 20 instruments.

Sir Ian SINCLAIR (United Kingdom) said that the number of instruments of ratification required for the entry into force of the convention was, in his delegation's view, an important question. In the progressive development and codification of the general rules of international law, there was the precedent of several conventions that required 35 instruments of ratification, in particular the Convention on the Law of Treaties and the Convention on the Representation of States in their Relations with International Organizations with a Universal Character. It was essential to take into account not only those precedents but also the need to stipulate that a considerable proportion of the international community should express its consent to be bound by the Convention. In recent years, the number of

States had increased so fast that it might be possible to envisage a figure even higher than 35 instruments of ratification. However, the United Kingdom delegation recognized that in the present case, in view of the characteristics of the convention, it was not necessary to have so large a figure. It therefore formally proposed that the number of instruments of ratification required for the entry into force of the convention should be 25.

Mrs. BOKOR-SZEGÖ (Hungary) observed that during the discussions, particularly on article 7, the majority of delegations had expressed the wish that the convention should enter into force in the near future, particularly as the decolonization process had now practically come to an end. Accordingly, she did not understand the logic of the efforts being made to delay the entry into force of the convention. In her opinion it was quite right to say that the convention should enter into force after the deposit of the tenth instrument of ratification.

Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that the convention should enter into force as soon as possible. The number of instruments of ratification required should therefore be fixed at 10, as proposed by the Drafting Committee. It was necessary to take into account that objective factor, and not subjective factors such as those mentioned by the representative of the United Kingdom. His delegation unreservedly supported the text of the final clauses proposed by the Drafting Committee.

Mr. OLIVEIRA (Angola) said that Angola attached great importance to the progressive development of international law. For instance, a few months after it had acceded to independence in extremely difficult conditions, his Government had tried to persuade the international community to approve a convention on the prevention and punishment of the crime of engaging in mercenary activities, and thus fill a void in international law. If Angola had not always participated as actively as it would have wished in the work of international organizations for the development of international law, that was merely because it had been independent for only three years and lacked qualified personnel. His delegation hoped that, in the case under discussion, the Conference would adopt machinery that would make it possible for the convention to enter into force as soon as possible. It welcomed the convention

elaborated by the Conference, which embodied solutions that would contribute to the progressive development of international law. The convention was belated, but he doubted whether it could have been adopted 20 years previously. It could not be regarded merely as an academic exercise. It was understandable that, because of misgivings or mental reservations, some States might not sign the Convention: but such misgivings or mental reservations could not alter the fact that there was a consensus in the international community on the questions involved. His delegation considered therefore that 10 instruments of ratification would be enough for the entry into force of the convention.

Mr. NATHAN (Israel) said that the convention could be placed in the category of normative treaties, i.e. treaties establishing a multilateral legal régime or codifying legal rules. That characteristic of the convention must be borne in mind, since it might perhaps be contrary to the purposes of the convention to provide that it should enter into force after the deposit of the tenth instrument of ratification. The number of instruments suggested seemed to be unprecedented for a treaty of that kind, because there were already two codification conventions which provided that the number of ratifications should be 35. Since the adoption of those instruments, the number of States Members of the United Nations had grown to 149, which meant that the figure of 10 represented only 7 per cent of the Organization's membership. Naturally, the entry into force of the convention must not be unduly delayed; but a balance must be found between the need to accelerate entry into force so that newly independent States could take advantage of the provisions of the convention, and the need to provide for the deposit of a reasonable number of instruments of ratification before the entry into force of the convention. In the circumstances, his delegation regarded as reasonable the figure of 25 proposed by the United Kingdom delegation, which was equivalent to one-third of the States participating in the Conference.

Mr. PERE (France) drew attention to the fact that although nine delegations in the Drafting Committee had favoured the figure 10, five other delegations had favoured a higher figure. Since the Drafting Committee had based itself on the final clauses of codification conventions that had already been adopted, he wondered why the Conference should make innovations in the

present case. His delegation believed that the number of instruments of ratification required for entry into force of the convention should be fairly large for several reasons, particularly because the prestige of the United Nations would be damaged if the Conference were to fix too low a figure for a major codification convention elaborated under the auspices of an organization of a universal character with nearly 150 Member States. It was wrong to say that nothing had been done to facilitate the earliest possible entry into force and application of the convention. On the contrary, no convention had gone so far as the present one in that respect. For instance, article 7 permitted immediate, and even retroactive, application of the convention by any State that so wished. He was therefore surprised by the allegations that certain delegations were showing ill-will in the matter, when States were in fact permitted to apply the provisions of the convention even before its entry into force.

In the opinion of his delegation the problem was one of form, not of substance. After referring to the codification conventions that required 35 instruments of ratification, he also cited the example of the recent Hamburg Convention on the Carriage of Goods by Sea which, although it dealt with much more delicate problems and had immediate financial and economic implications, established the figure of 20 in accordance with the wishes of delegations of developing countries, which his delegation had supported. In conclusion, he suggested that if the Conference were to fix too low a figure, it would raise doubts concerning the quality of its work and concerning the welcome which the international community was likely to give to an uncontroversial convention.

Mr. RITTER (Switzerland) pointed out that the future convention was intended to be universal, which meant that it must be ratified by a number of States that was representative of the international community. In his opinion, by permitting the entry into force of a universal convention ratified by only 10 States, the Conference might distort the nature of the convention, lessen its prestige and detract from its authority. It was true that to require a high number of ratifications might delay the entry into force of the convention, as had occurred with the 1969 Vienna Convention on the Law of Treaties. In the case of the current convention, however, the problem was solved in advance as a result of the provisions of article 7, which permitted a State that had emerged

prior to the entry into force of the convention to apply the provisions of the convention with respect to its own succession of States. It did seem possible, therefore, to adopt a figure more in line with the universal character of the Convention. In his opinion, the figure of 35 would already represent an easing of requirements by comparison with the 1969 Vienna Convention, because the number of Members of the United Nations had increased since that date; but his delegation supported the figure of 25 proposed by the United Kingdom which, in view of the provisions of article 7, should meet all objections.

Mr. WALLACE (United States of America) said he thought that the figure proposed by the Drafting Committee was too small. A significant minority of the members of the Drafting Committee had voted for a higher figure, as the representative of France had emphasized. If, as the representative of Angola had said, the convention enjoyed the consensus of the international community, which at present numbered 158 States, the figure 10 in no way reflected that consensus. It was true that there were relatively few newly independent States that were liable to invoke the provisions of the Convention; but all States could be affected by a succession of States.

He pointed out that two of the more recent codification conventions had set the number of ratifications required at 35, and none had provided for a figure lower than 22. In his opinion, the figure should be set at 25 in the current convention and should not, in any case, be less than 20.

Mr. KASASA (Zaire) said that in the proposal for final clauses (A/CONF.80/DC.27) which it had submitted to the Drafting Committee on 7 August 1978, his delegation had proposed that the number of ratifications required for entry into force of the convention should be 25. It considered that a happy medium must be found between the figure of 35 established in the 1969 Vienna Convention, which was excessive, and the figure of 10 proposed by the Drafting Committee, which detracted from the value of the work of the Conference and did not take account of the importance of the future convention which was of interest to the whole international community. He failed to understand the fears of delegations which considered that, by establishing the necessary number of ratifications at 25, the Conference would delay the entry into force of the convention. In his opinion the convention was one of which the Conference could be proud and which States would not hesitate to ratify.

Mrs. THAKORE (India) said that, for the reasons given by the representatives of the United Kingdom and Switzerland, she favoured a figure not lower than 20. She considered that the convention under discussion was closely linked to the 1969 Vienna Convention and must be supported by a significant number of States.

Mr. YACOUBA (Niger) said that the Conference must ensure not only the progressive, but also the rapid, development of international law. It should not, therefore, follow the example of the 1969 Vienna Convention, which had become a reference source even before its entry into force. If it were to achieve its purpose, the convention to be adopted by the Conference must take effect as soon as possible. In a spirit of conciliation, he could agree that the number of ratifications necessary for the entry into force of the convention should be 15.

Mr. YASSEEN (Chairman of the Drafting Committee) said that he wished to make it clear that, when the Drafting Committee had voted on the number of instruments of ratification or accession required for the entry into force of the convention, the figure 10 had been adopted by 9 votes to 5, with one abstention. He also wished to explain that he had not said that the convention was not of interest to all States but that it was not of interest to all States in the same degree.

Mr. FLEISCHHAUER (Federal Republic of Germany) supported the United Kingdom proposal to set the number of ratifications necessary for entry into force of the convention at 25. In his opinion, the question of accelerating or delaying the progressive development of international law was not the main issue; what was essential was to make sure that the convention enjoyed sufficient support in the international community. The practice of States at the end of the 1950s and in the 1960s showed that the number of ratifications required for the entry into force of conventions of a universal character had been one-third of the States Members of the United Nations. In view of the increase in the number of Member States, it was now impossible to maintain that proportion by setting the number of ratifications required at 50. Twenty-five was, however, a minimum figure.

Mr. MUDHO (Kenya) pointed out that, whereas in the case of certain conventions - such as the Hamburg Convention on the Carriage of Goods by Sea - States had to be given sufficient time to make preparations for applying the

provisions of the convention, the same was not true in the case of the current convention which reflected the existing state of customary law. Accordingly, he failed to see why, before applying the convention, States should wait until it had been ratified by 25 States. He was surprised to note that delegations that had referred to the provisions of article 7, which permitted retroactive application of the convention, were the very same ones which advocated a high number of ratifications. He pointed out that the Vienna Convention on the Law of Treaties had, 10 years after its adoption, still not entered into force and, as the Chairman of the Drafting Committee had pointed out, the current convention was essentially of interest to a relatively small number of States. He would, therefore, have preferred the figure of 10 proposed by the Drafting Committee but, in a spirit of conciliation, he was prepared to accept the figure of 15.

Mr. MARESCA (Italy) said he had always regretted that so much time elapsed between the signing of an international convention and its entry into force, as had occurred in the case of the Vienna Convention of 1969 which was still not in force. The figure of 35, which was established in that Convention, seemed too high; and, in his view, the Conference would be making a serious error if it adopted that figure in the convention now under discussion. The international community had admittedly grown but that was the result of the emergence of new States; and it was precisely they which were impatiently waiting for the convention to enter into force.

Also, ratification of a convention by a State involved a lengthy ministerial and parliamentary procedure, which delayed the entry into force of the convention. He therefore believed that, the number of instruments of ratification required should be set at a figure lower than 35 and, in a spirit of compromise, he would accept the figure of 25 proposed by the United Kingdom, which he regarded as a maximum.

Mr. TODOROV (Bulgaria) endorsed all the arguments put forward in favour of the figure 10. The figure of 35 established in the Vienna Convention of 1969 on the Law of Treaties and in the Vienna Convention of 1975 on the Representation of States in their Relations with International Organizations of a Universal Character, seemed to be too high; and, indeed, neither convention had yet come into force. A convention recently adopted under the auspices of WIPO had fixed at 12 the number of ratifications needed for its entry into force. He therefore supported the number proposed by the Drafting Committee.

Mr. JOHARD (Iraq) proposed the figure of 15, which he regarded as a reasonable compromise.

Mr. EUSTATHIADES (Greece) pointed out that the value of a codification convention lay not only in its application by the contracting parties but also in its impact on general international law. The date of its entry into force was therefore not of decisive importance: the manner in which it was applied was more important. Any State wishing to accelerate its entry into force had only to ratify it without delay.

However, the present convention was not an ordinary codification convention, since it would not be applied from day to day like the Vienna Convention of 1969 on the Law of Treaties or the Conventions of 1961 and 1963 on Diplomatic Relations and Consular Relations. It was one which would apply only in cases of succession of States - in other words, in very rare instances. It should therefore enter into force more quickly than the other codification conventions, and he proposed that the number of instruments of ratification should be fixed at between 10 and 20.

Mr. SCOTLAND (Guyana) considered 10 to be a reasonable number in view of the objective of the convention, which was to enable newly-independent States to avail themselves as quickly as possible of the advantages provided for in treaties concluded by the predecessor State. The argument that the convention, in view of its universal character, could not enter into force until it had been ratified by a sizeable proportion of the international community failed to convince him, because the figure of 35 was not representative of the international community either. Also, the two Vienna Conventions in which that number had been established could not be taken as a reference since they were different in nature from the present convention. He could therefore not accept a number higher than 20.

Mrs. BEMA KUMI (Ghana) considered that the progressive development of international law required that the present convention should come into force as soon as possible, so that newly independent States could avail themselves of its provisions without delay. She was therefore in favour of the figure of 10, but could accept 15 in a spirit of compromise.

Mr. STUTTERHEIM (Netherlands) remarked that the number of instruments of ratification required was always arbitrary. For a codification convention, ratification by one quarter of the number of States Members of the United Nations should normally be required. In the present case, however, and particularly in view of the special importance of the entry into force of the convention in accordance

with article 7, his delegation considered that a lower number was permissible. It therefore favoured the figure of 15, which it had proposed in the Drafting Committee.

Mr. MAIGA (Mali) took the view that the value of a universal convention did not depend on the number of ratifications, as had once been thought. A number of codification conventions concluded during the last decade had not yet entered into force because the number of ratifications needed was too high. The international community's codification efforts were designed to guarantee the stability of international relations in the legal field. Since one of the principal phenomena of the present age - the decolonization process - occupied an important place in the future convention, the latter should come into force as soon as possible. His delegation would like the convention to enter into force immediately following its signature; but out of respect for the views of other delegations, it would accept the lowest number of ratifications proposed - i.e. the number proposed by the Drafting Committee.

Mrs. VALDEZ (Cuba) said that, in the Drafting Committee, her delegation had advocated the lowest possible figure. The entry into force of the Vienna Convention on the Law of Treaties, on which the future convention was modelled, had been subject to the requirement of a much higher number of ratifications. It must be borne in mind that the question of succession of States with regard to treaties was such that the future convention would be a dead letter if its entry into force were to depend on an excessively high number of ratifications. The number should not be higher than 10.

Mr. TORNARITIS (Cyprus) proposed that, in a spirit of conciliation and bearing in mind the special nature of the future convention, the number of ratifications needed should be established at 20.

The PRESIDENT, summing up the discussion, said that, in addition to the proposal by the Drafting Committee that 10 ratifications should be required, the Conference had before it an amendment by the United Kingdom calling for 25 ratifications, one by Greece calling for 20 ratifications and another by Iraq, supported by the Netherlands, providing for 15 ratifications.

Sir Ian SINCLAIR (United Kingdom) announced that, in order to simplify the procedure, his delegation would be prepared to withdraw its amendment if delegations which favoured 20 ratifications would also withdraw their support for that figure.

Mr. RYBAKOV (Union of Soviet Socialist Republics), speaking on a point of order, said that the Conference did not have before it a basic proposal by the Drafting Committee and three amendments to that proposal, but rather four independent proposals concerning the number of ratifications. It was therefore essential to determine the order in which those proposals were to be put to the vote. Rule 41 of the rules of procedure, concerning votes on proposals relating to the same question, should be applied.

The PRESIDENT took the view that the Drafting Committee's text should be regarded as the basic proposal. According to rule 40 of the rules of procedure, "a motion was considered an amendment to a proposal if it merely added to, deleted from or revised part of that proposal". The proposals made during the discussion were amendments in that they sought to amend a figure established by the Drafting Committee. The Conference should therefore vote first on the amendment which was substantively farthest removed from the original proposal, in other words, on the United Kingdom amendment. If that amendment was rejected, it should then vote on the amendment by Cyprus and, if necessary, on the amendment proposed by Iraq and the Netherlands.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said he still thought that the Conference had before it four separate proposals, each of which related to the requirements for entry into force of the future convention. Those proposals should be put to the vote in the order in which they were submitted, i.e. starting with that of the Drafting Committee.

The PRESIDENT said he could not agree with the Soviet representative. For motions submitted during the discussion to be considered as independent proposals, they would have to be unrelated to other proposals; but the motions under discussion were concerned simply with figures which were meaningful only in relation to the Drafting Committee's proposal. According to the methods of work and procedures (A/CONF.80/3, para. 9) adopted by the Conference in 1977, "proposal" meant any text in addition to the "basic proposal" provided for in Rule 27, i.e. the draft articles adopted by the International Law Commission, on a matter which had not been considered by the Commission, such as a preamble, the final clauses and any additional protocols, etc. What the Drafting Committee had submitted to the Conference was a proposal, and what had been submitted during the discussion were amendments to that proposal.

Mr. YANGO (Philippines), speaking on a point of order, reminded the Conference that prior to the present procedural debate the United Kingdom representative had said that his delegation was prepared to withdraw its oral amendment on a certain condition.

The PRESIDENT suggested that a decision on the text submitted by the Drafting Committee for article [IV] and on the amendments thereto should be deferred until the following meeting.

It was so decided.

Article [V] (Authentic texts)

Mr. YASSEEN (Chairman of the Drafting Committee) explained that the Drafting Committee had modelled article [V] on article 85 of the Vienna Convention on the Law of Treaties. In view of the relevant General Assembly resolution, Arabic had been added to the languages in which the authentic texts were established.

The PRESIDENT said that, if there were no objections, he would take it that the Conference wished to adopt article [V].

It was so decided.

Testimonium

Mr. YASSEEN (Chairman of the Drafting Committee) pointed out that the testimonium had been based on that of the Vienna Convention on the Law of Treaties.

The PRESIDENT said that, if there were no objections, he would take it that the Conference wished to adopt the testimonium.

It was so decided.

Report of the Drafting Committee on the preamble to the Convention (A/CONF.80/21)

Mr. YASSEEN (Chairman of the Drafting Committee) said that in 1977 the Conference had requested the Drafting Committee to prepare a draft preamble to the Convention. The draft which the Committee was now submitting direct to the Conference was based on various working papers and proposals. In 1977, the Drafting Committee had had before it a draft preamble submitted by Spain (A/CONF.80/DC.9) and a draft paragraph submitted by the United Nations Council for Namibia (A/CONF.80/DC.13). In 1978, it had received a draft preamble from Ivory Coast (A/CONF.80/DC.21), another draft from Uganda (A/CONF.80/DC.26), a draft paragraph from the Ukrainian Soviet

Socialist Republic (A/CONF.80/DC.29) and a draft preamble submitted jointly by Ivory Coast and Spain (A/CONF.80/DC.30). In preparing its draft preamble, the Drafting Committee had also taken into account a proposal submitted by Afghanistan to the 21st meeting of the Committee of the Whole (A/CONF.80/C.1/SR.21, para. 62) and a proposal by the Netherlands (A/CONF.80/C.1/L.57) which had been referred to it by the Committee of the Whole. Lastly, the Drafting Committee had had before it two working papers prepared by the Secretariat (A/CONF.80/DC/R.10 and R.11).

Apart from the proposal by the United Nations Council for Namibia for a new paragraph to be inserted in the preamble (A/CONF.80/DC.13) -- the substance of which proposal had been incorporated in the resolution adopted by the Conference at its 12th meeting (A/CONF.80/SR.12) -- all the documents to which he referred had been taken into consideration by the Drafting Committee, which had devoted six consecutive meetings to the preparation of the preamble.

In preparing its draft preamble, the Drafting Committee had borne in mind the characteristics of the future convention, and had endeavoured to make clear the close relations between it and the Vienna Convention on the Law of Treaties. The Vienna Convention was expressly mentioned in three paragraphs of the preamble. Two paragraphs were virtually identical with paragraphs in the preamble to the Vienna Convention. Lastly, the importance of the codification and progressive development of international law for the international community had been duly emphasized.

Apart from the penultimate paragraph, on which one member of the Drafting Committee had reserved his position, each of the eleven paragraphs of the preamble had been adopted by consensus.

Since recent practice in regard to succession of States was for the most part directly related to decolonization, and since most of the problems raised by successions of States were connected with that phenomenon, the first preambular paragraph referred to the profound transformation of the international community brought about by the decolonization process. That provision was based on proposals submitted respectively by Spain and by Spain and Ivory Coast. The second paragraph looked to the future, with a reference to other factors which might lead to cases of

succession of States. The third paragraph set out the implications of the ideas expressed in the preceding paragraphs, i.e., the need for the codification and progressive development of the rules relating to succession of States in respect of treaties, as a means for ensuring greater juridical security in international relations. The fourth paragraph, virtually identical with the corresponding provision in the Vienna Convention, contained a reference to principles that were universally recognized and directly related to the aims of the convention and the rules it contained. In the fifth paragraph, which was based on the proposal by the Ukrainian Soviet Socialist Republic, the Drafting Committee had emphasized the importance of the codification and progressive development of international law for the strengthening of international peace and co-operation. The sixth paragraph, which also corresponded to a provision in the Vienna Convention, referred to the fundamental principles of international law which were embodied in the Charter of the United Nations, and on which the convention was based. The seventh paragraph referred to a principle which was derived from the Charter and was obviously closely related to the rules concerning succession of States -- the principle of respect for the political independence and territorial integrity of all States. The eighth and ninth paragraphs indicated the links between the future convention and the Vienna Convention, article 73 of which was crucial in that respect, since it provided in particular that the provisions of the Vienna Convention did not prejudge any question which might arise in regard to a treaty from a succession of States. The tenth paragraph referred to the relation between the convention and the law of treaties, of which the Vienna Convention was the most authoritative expression. Lastly, the eleventh paragraph stated a principle which seemed to be obligatory in conventions prepared under United Nations auspices for the codification of international law -- i.e. the principle that the rules of customary international law should continue to govern questions not regulated by such conventions.

Mr. DUCULESCU (Romania) stressed the importance of the draft preamble under consideration, which was a genuine code of moral, political and legal principles in the light of which the convention would be interpreted. He welcomed the reference in the preamble to several essential principles, but regretted that some of the formulations adopted by the Drafting Committee were less satisfactory than those used in the draft submitted by Spain and Ivory Coast (A/CONF.80/DC.30), in particular the formulation concerning any attempt to disrupt, partly or completely, the national unity of a State.

In his delegation's view, the eleventh paragraph of the draft preamble, to the effect that the rules of customary international law would continue to govern questions not regulated by the provisions of the convention, must be interpreted in the light of the sixth paragraph. The rules of customary law in question were those which were in conformity with international law, and not earlier customary rules which were contrary to the interests of new States. That was the sense of the paragraph in the proposal by Uganda (A/CONF.80/DC.26) which emphasized the desire to amplify and codify in a convention the rules and practices of customary international law in regard to succession of States in respect of treaties.

The PRESIDENT said that if there were no objections, he would take it that the Conference wished to adopt the draft preamble submitted by the Drafting Committee (A/CONF.80/21).

It was so decided.

Mr. PERE (France) said that his delegation had joined the consensus on the understanding that the fifth and tenth preambular paragraphs would be interpreted in the manner it had said that it understood them.

The fifth paragraph seemed to some extent to duplicate the preceding paragraph, which affirmed the principle pacta sunt servanda. In his delegation's view, the fifth paragraph was nc more than a tribute to a particular class of treaties. It was obvious, however, that the duty to comply with multilateral treaties, and those the object and purpose of which were of interest to the international community as a whole, should be interpreted in accordance with the fourth paragraph, which affirmed the principle of free consent, and with the sixth paragraph, which proclaimed the principles of the sovereign equality of States, the independence of States, and non-interference in the internal affairs of States.

The tenth paragraph contained a reference to the Vienna Convention on the Law of Treaties, with regard to questions of the law of treaties other than those which might arise from a succession of States. In that connexion, he reminded the Conference that in the course of the discussions, it had been accepted that the Vienna Convention included both pre-existing customary rules and rules elaborated by the Vienna Conference on the Law of Treaties. For its part, the Drafting Committee had agreed that the tenth paragraph of the preamble referred solely to rules already in existence, which meant that no others could be invoked

against States that were not parties to the Vienna Convention. In that connexion, his delegation noted with satisfaction that the use of the formula "including those" showed unequivocally that only some of the rules of customary law had been consolidated in the Vienna Convention.

Mr. MARESCA (Italy) pointed out that the first paragraph of the preamble proclaimed a historical fact which was not, however, brought into relation with the paragraphs which followed. It would have been better to add to it the words "modifying the legal regimes for the succession of States in respect of treaties".

Mr. FLEISCHHAUER (Federal Republic of Germany) said that his delegation had joined in the consensus although it had some difficulty with the fifth paragraph of the preamble. The concept of "consistent observance of general multilateral treaties" was by no means precise. Neither the general law of treaties nor the Vienna Convention on the Law of Treaties recognized any such class of treaties. In his delegation's view, no class of treaty was any more binding than another.

Title of the future convention

The PRESIDENT suggested that the Drafting Committee might be requested to submit to the Conference a title for the future convention.

It was so decided.

The meeting rose at 6.55 p.m.

UNITED NATIONS

GENERAL ASSEMBLY

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PROVISIONAL: FOR PARTICIPANTS ONLY

UNITED NATIONS CONFERENCE ON THE SUCCESSION OF STATES IN RESPECT OF TREATIES

Resumed session

PROVISIONAL SUMMARY RECORD OF THE FOURTEENTH MEETING

held at the Neue Hofburg, Vienna,
on Tuesday, 22 August 1978, at 11.25 a.m.

President: Mr. ZEMANEK (Austria)

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N.B. Participants wishing to have corrections to this provisional summary record incorporated in the final record of the meeting are requested to submit them in writing, preferably on a copy of the record itself, to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva, as soon as possible and not later than 30 September 1978.

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CONSIDERATION OF THE QUESTION OF SUCCESSION OF STATES IN RESPECT OF TREATIES IN ACCORDANCE WITH RESOLUTIONS 3496 (XXX) AND 31/18 ADOPTED BY THE GENERAL ASSEMBLY ON 15 DECEMBER 1975 AND 24 NOVEMBER 1976 (item 11 of the agenda) (continued) (A/CONF.80/4 and 5 and Corr.1; A/CONF.80/MP.1 and MP.2)

Final clauses of the Convention proposed by the Drafting Committee (A/CONF.80/19)

Article [IV] - Entry into force

The PRESIDENT said that the previous day's meeting had deferred a decision on the Drafting Committee's text for article [IV] and the oral amendments thereto. Three amendments had been proposed to the figure for the number of ratifications required - ten - as it appeared in the text recommended by the Drafting Committee.

Mr. TORNARITIS (Cyprus) said he withdrew his delegation's amendment proposing 20 instruments.

Mr. NAKAGAWA (Japan) said his delegation wished to propose this figure of 20 instruments.

Sir Ian SINCLAIR (United Kingdom) said that in view of the fact that the amendment calling for 20 instruments had been reinstated, he would not insist on a vote on the United Kingdom amendment calling for 25 instruments.

The PRESIDENT put to the vote the Japanese amendment to article [IV].

The Japanese amendment was rejected by 42 votes to 28, with 8 abstentions.

The PRESIDENT put to the vote the amendment proposed by Iraq and the Netherlands, which called for 15 instruments.

The amendment proposed by Iraq and the Netherlands was adopted by 55 votes to 5, with 15 abstentions.

The PRESIDENT put to the vote article [IV] of the final clauses, as amended.

Article [IV] as amended, was adopted by 69 votes to 1, with 8 abstentions.

Articles 6, 7, 2, title of article 11, article 12 and article 12 bis as adopted by the Committee of the Whole

The PRESIDENT invited the Conference to adopt articles 6, 7, 2, the title of article 11, article 12 and article 12 bis as adopted by the Committee of the Whole at its 53rd meeting (article 6) and its 56th meeting (articles 7, 2, title of article 11, article 12 and article 12 bis) on 17 and 21 August 1978, which appeared in document A/CONF.80/22 and Corr.1, /23 and /24.

Articles 6 and 7

Articles 6 and 7 were adopted without a vote.

Article 2 (A/CONF.80/23)

Mr. KOH (Singapore) said that he wished to place on record his delegation's view that the concept of a newly independent State as defined in paragraph 1 (f) of article 2 was applicable to a case like that of Singapore.

Article 2 was adopted without a vote.

Title of Article 11 (A/CONF.80/24)

Mr. RANJEVA (Madagascar), noting that the word "regime" was used in the plural in the title of article 11, said it was his delegation's understanding that the title referred to boundaries established by treaty between the predecessor State and neighbouring States and that consequently neither the title nor the text of article 11 affected the principle of the territorial integrity of the successor State, based on the constant area of territory it had occupied for many years.

The title of Article 11 was adopted without a vote.

Article 12 (A/CONF.80/24)

Mr. NAKAGAWA (Japan) said that, as his delegation had stated at the twentieth meeting of the Committee of the Whole in 1977, it considered that the rules embodied in article 12, as in article 11, were rules of customary international law, which had been recognized both in the writings of jurists and in State practice. There were, however, legal situations created by treaty which, although having a dispositive effect, did not have the character of a boundary régime, for instance, treaties relating to the settlement of claims. It was one of the established rules of international law that legal situations created by such treaties were not affected by a succession of States as such.

Article 12 was adopted without a vote.

Article 12 bis (A/CONF.80/24)

Mr. AHIPEAUD (Ivory Coast) said that, while his delegation was not opposed to the adoption of article 12 bis, it interpreted its terms to mean that nothing in the Convention should affect the permanent sovereignty - as opposed

to the principles of international law affirming that concept - of every people and every State over its natural wealth and resources.

Mr. ROVINE (United States) said his Government considered article 12 bis to be ambiguous in two respects. In the first place, the type of treaties that would be covered by its provisions was not clear, although his delegation's impression was that it would be limited to those relating to the consumption of natural resources and consequently that transit and access rights would not be affected. Secondly, while his Government had no difficulty in accepting the principle of permanent sovereignty over natural wealth and resources, it had serious doubts as to the meaning to be attached to that principle.

His delegation's willingness, in the Committee of the Whole, to abstain in the vote on the article had been based on its understanding that the United Nations Declaration on Permanent Sovereignty over Natural Resources, as set forth in General Assembly resolution 1803 (XVII), would give a more precise meaning to the principle. In the light of the further debate and consideration of the matter, however, his Government now doubted whether that resolution in fact constituted the only basis for interpreting a principle that had been accepted by many delegations, and took the view that there was substantial ambiguity both in the drafting and in the meaning of article 12 bis.

As his delegation had already stated in the Committee of the Whole, it could have accepted the phrase "in accordance with international law", which appeared at the end of article 12 bis as originally formulated, and also the statement that nothing in the Convention should affect the relevant rights and obligations of States under international law and other treaties. It attached considerable importance to the preamble, which provided that the rules of customary international law would continue to govern questions not regulated by the Convention; that clause would be extremely useful in giving greater precision to article 12 bis. Since the Conference had not made its intent clear on the issues he had mentioned, however, his delegation was unable to accept the article and would vote against it. He requested that the vote be taken by roll-call.

Mr. MONCAYO (Argentina) said that one of the characteristics of an independent State was its freedom to dispose of its own natural resources. That did not mean that a successor State had to withhold such resources from the process of creation and change and from that exchange of goods and wealth which was one of the dynamic elements of modern international relations. Nor did it mean adopting an inward-looking nationalism that could only lead to stagnation. That had been the thinking behind his delegation's initial proposal, submitted in 1977, and it was the reason for its support of article 12 bis.

Many examples were to be found in developing countries of the mutual benefits which accrued from the pooling of their resources with other States as well as with international financial and technical organizations, foreign State-owned enterprises and private companies. Through co-operation in a variety of forms, it had proved possible to mobilize extensive resources, to undertake imaginative projects and to promote progress in general.

Article 12 bis, however, merely sought to ensure that a successor State would have a hand in controlling its own wealth and would have the power to decide, of its own free will, when and how the natural resources of its territory should be employed. For countries which lacked capital and technological know-how and which, in certain cases, were faced with increasing poverty, it was imperative that the attributes of political independence should be recognized and that those countries should be guaranteed the possibility of exercising sovereignty over their own natural resources. The transfer of political power to a State without an accompanying power to control and exploit those resources was but a nominal transfer of power that would not permit it to engage in any effective international co-operation.

Mr. ALVAREZ-VITA (Peru) said he endorsed the views expressed by the representative of Argentina.

Mr. MARESCA (Italy) said that, while his delegation would cast its vote in favour of article 12 bis, it would reiterate that it interpreted its terms as involving a total renvoi to international law. Thus, wherever the economic sovereignty of the State was to be respected, so were its obligations in respect of any investments of which it was the recipient.

In accordance with the request of the United States representative, a vote on article 12 bis was then taken by roll-call.

Upper Volta, having been drawn by lot by the President, was called upon to vote first. The result of the voting was as follows:

In favour: Angola, Argentina, Australia, Austria, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Egypt, Ethiopia, Finland, German Democratic Republic, Ghana, Greece, Guyana, Holy See, Hungary, India, Indonesia, Iraq, Ireland, Italy, Ivory Coast, Kenya, Kuwait, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, Mexico, New Zealand, Niger, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Spain, Sri Lanka, Sudan, Surinam, Swaziland, Sweden, Switzerland, Thailand, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Yugoslavia and Zaire.

Against: United States of America.

Abstentions: Belgium, Canada, France, Federal Republic of Germany, Israel, Japan, Netherlands and the United Kingdom of Great Britain and Northern Ireland.

Article 12 bis was adopted by 73 votes to 1, with 8 abstentions.

Mr. FLEISCHAUER (Federal Republic of Germany), speaking in explanation of vote, said his delegation had abstained in the vote on article 12 bis for the reasons which it had already stated in the Committee of the Whole on 18 August 1978, and principally because of the inherent ambiguity of its terms. The respect in which the Federal Republic of Germany held the permanent sovereignty of States over their natural wealth and resources had been demonstrated on many occasions.

It considered that such sovereignty should always be exercised in accordance with international law and with due respect for the rights of other States, territories and peoples protected by international law. Consequently, it felt itself to be in harmony with General Assembly resolution 1803 (XVII) which, in reference to the exercise of sovereignty over natural resources, spoke of "the mutual respect of States based on their sovereign equality".

Sir Ian SINCLAIR (United Kingdom), speaking in explanation of vote, said that his delegation had abstained in the vote on article 12 bis because, notwithstanding the efforts made in the Informal Consultations Group, it considered that the language of its provisions was still ambiguous. It would have preferred the reference to international law to come at the end of the sentence and considered that the provision would have been far clearer had it read: "Nothing in the present Convention shall affect the permanent sovereignty of every people and every State over its natural wealth and resources in accordance with international law".

His Government's basic position on the concept of permanent sovereignty over natural resources had been made clear on many occasions in the United Nations General Assembly and other United Nations bodies. It acknowledged that such a concept existed but maintained that its exercise was regulated by principles of international law which, in the final analysis, must be capable of resolving any conflict or potential conflict between the concept of permanent sovereignty and other concepts, such as that of acquired rights. That was the sense in which it interpreted the phrase "the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources". Within that context, account would naturally have to be taken of General Assembly resolution 1803 (XVII) which, in the view of his delegation - a view affirmed by the sole arbitrator in the Texaco Arbitration - constituted the most recent and generally accepted formulation of the concept of permanent sovereignty over natural resources and its relationship to international law.

He wished to reaffirm the remarks he had made in the Committee of the Whole regarding his understanding of the relationship between article 12 bis and the rest of the Convention, and to indicate that his delegation did not interpret article 12 bis as undermining or in any way affecting the principle of ipso jure continuity embodied in the rules set forth in Part IV of the Convention.

Title and text of the resolution concerning Article 30 (A/CONF.80/25)

Mr. GIL-MASSA (Mexico), referring to the roll-call vote taken on the draft resolution on Namibia (A/CONF.80/L.1), said he wished to call attention, in the strongest terms, to the fact that, although he had indicated before the result of the vote was announced that he wished to cast his vote, that request had not been granted. His delegation had further requested that the Secretariat include in the summary record a statement to the effect that Mexico would have cast its vote in favour of the draft resolution had also not been met. He would therefore point out that, in accordance with the practice followed throughout the United Nations family of organizations, any delegation could cast or amend its vote before the result of the vote was announced. Only if a delegation endeavoured to do so after the result had been announced would it be out of order.

The PRESIDENT said that due note would be taken of the Mexican representative's remarks.

Mr. DIENG (Senegal) asked that a vote be taken on the draft resolution concerning article 30 (A/CONF.80/25).

The title and text of the resolution concerning article 30 were adopted by 49 votes to 5, with 24 abstentions.

Peaceful settlement of disputes (Articles A, B, C, D and E, and Annex) (A/CONF.80/C.1/L.60)

Mr. DUCULESCU (Romania) said his delegation considered that direct consultation and negotiation between the parties concerned, on the basis of equality of States and mutual respect, was to be regarded as the main means for resolving disputes in the sphere of succession of States to treaties as in any other sphere of international relations.

Articles A, B, C, D and E, and the annex thereto, relating to the peaceful settlement of disputes, were adopted without a vote.

Mr. TORRES BERNARDEZ (Deputy Executive Secretary of the Conference) said that he had been asked by the representative of the Secretary-General at the Conference, Mr. Erik Suy, the Legal Counsel, to make the following statement.

"In adopting the articles on the peaceful settlement of disputes and the annex relating to conciliation procedure, the Conference has decided, inter alia, that the expenses of the Conciliation Commission shall be borne by the United Nations. The relevant text is similar to that adopted at the

United Nations Conference on the Law of Treaties. Since this decision may have financial implications and entail expenses for the Organization, the General Assembly is clearly required to pronounce on its effects. The Conference might therefore decide, as was done in 1969, to request the United Nations General Assembly to consider paragraph 7 of the annex to the Convention and take the appropriate measures."

The PRESIDENT said that in the light of the statement just made by the Deputy Executive Secretary, if there were no objections he would take it that the Conference decided to request the General Assembly of the United Nations to consider the provisions of paragraph 7 of the annex to the Vienna Convention on Succession of States in respect of Treaties and take the appropriate measures.

It was so agreed.

Division of the Convention into parts and sections and titles thereof (A/CONF.80/C.1/10)

The division of the Convention into parts and sections and titles thereof was adopted without a vote.

Draft report of the Committee of the Whole on its work at the resumed session of the Conference (A/CONF.80/C.1/L.61)

The draft report of the Committee of the Whole on its work at the resumed session of the Conference was adopted without a vote.

Title of the Convention (A/CONF.80/27)

Mr. YASSEEN (Chairman of the Drafting Committee) said the Drafting Committee proposed that the future Convention be entitled "Vienna Convention on Succession of States in Respect of Treaties". That was also the title proposed by the International Law Commission, and it was in keeping with the wording of article 1, which determined the scope of the Convention. The inclusion of the name of the town where the Conference had taken place was a tribute to the tradition which linked Vienna with the work for the progressive development and codification of international law.

Mr. LUKABU (Zaire) said his delegation considered that the English term "in respect of" was preferable to the French rendering "en matière de" and that it would like the Conference to note that it considered it would have been better if the title in French had corresponded exactly to the English title.

The title of the Convention was adopted without a vote.

Adoption of a Convention and other instruments deemed appropriate and of the Final Act of the Conference (item 12 of the agenda) (A/CONF.80/31)

The PRESIDENT invited the Conference to vote on the text of the draft Convention as a whole as contained in document A/CONF.80/31.

The Convention was adopted by 76 votes to none, with 4 abstentions.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that among the considerations that had led his delegation to vote for the Convention was the fact that that instrument constituted a further contribution to the codification and progressive development of international law. It reflected a progressive conception of succession of States in respect of treaties, according to which there was a clear division between cases of succession connected with the process of decolonization on the one hand, and cases of succession connected with all other methods of the formation of new States on the other.

The consecration in the Convention of the application of the "clean-slate" principle in the event of decolonization was, as the Chairman of the Committee of the Whole had remarked, of truly historic significance. Under that principle, States which gained their independence as the result of decolonization were freed from all the treaties concluded with respect to them by the former metropolitan Power. The statement of that principle gave undeniable legal force to a rule that derived from the Declaration on the Granting of Independence to Colonial Countries and Peoples that the General Assembly had adopted, on the suggestion of the socialist countries, in its resolution 1514 (XV). The inclusion of that principle in the Convention was of not only political but also great practical importance.

Despite the great changes that had occurred with the collapse of empires in Africa and other continents in recent decades colonialism had not been entirely eliminated. It clung tenaciously to life and continued to manifest itself as neo-colonialism in ever more varied and refined forms. It was therefore premature to say that there was no need for the "clean-slate" principle. Imperialist circles already had on their conscience numerous coups d'etat and anti-government plots, infamous secret operations, and the physical torture of such valiant sons of Africa as Lumumba, Ngouabé, Mondlane and Cabral. In their continuing efforts to preserve, and indeed to consolidate, their position in emerging countries and to direct the development of such States into forms of "partnership" acceptable to themselves, they sought to exert direct pressure on the patriotic forces of Zimbabve and Namibia and to bring about a neo-colonialist solution of the Rhodesian and Namibian

questions. In addition, they recruited accomplices from among the members of puppet and anti-popular regimes, promoted neo-colonialist relations based on exploitation and plunder, and attempted to undermine progressive regimes and to weaken and, if possible, destroy the unity of African nations. They had even gone so far as to take direct military action against young States in Africa and elsewhere, using their own armed forces, a move that called to mind the worst days of colonial banditry. The forces of imperialism and reactionism were unable to reconcile themselves to the profound political, social and economic changes and the steady growth in strength that were occurring in young States.

The embodiment in the Convention of the "clean-slate" principle therefore dealt a severe blow to their aim of maintaining in force, in one form or another, the cabalistic conditions of the bilateral treaties of the colonial era on which the plunder and exploitation of dependent peoples had been based, while there was further cause for gratification in the fact that the Conference had decided against the inclusion in the Convention of provisions that would have provided encouragement for separatist movements in progressive developing countries and have opened the door to imperialist interference in their affairs.

It was of the very greatest significance that the Conference had reaffirmed in the Convention the principle of the inalienable sovereignty of peoples over their natural wealth and resources, which now stood confirmed as a peremptory rule of contemporary international law that was of universal import. It was no secret that the principal reason why the forces of imperialism, racism and reaction could not accept the changes that were occurring in Africa and elsewhere was that they wished to continue to exploit, and to maintain the control of their monopolies over, the natural riches of formerly dependent peoples. That was why they had girdled the earth with military bases designed to protect their access to foreign resources. The presence in the Convention of a provision emphasizing the illegality of the establishment of military bases on foreign soil was also therefore of great political and legal value.

The Soviet Union sought no advantages for itself on foreign territory; it did not go hunting for concessions, seek to attain political domination, or solicit permission to set up military bases. It remained firmly on the side of the peoples

that were struggling against the preservation of any form of colonialism or neo-colonialism and for national independence, social progress and democracy. It firmly condemned the military and political intervention of imperialism in the affairs of independent States and all encroachments upon their sovereignty and territorial integrity.

A further great merit of the Convention was that it reaffirmed the applicability in cases of succession, other than those which arose from decolonization, of the rule of continuity in treaty relations. It thereby underscored the generally recognized rule embodied in the Charter of the United Nations that pacta sunt servanda. That rule was of great importance in contemporary international relations. The USSR believed that, in the modern world, the unwavering observance of treaty obligations was in the interests of peace and security and of equitable and mutual beneficial co-operation among States. It strove consistently to ensure that aggression and imperialist arbitrariness were replaced in international relations by law and justice. It was a party to almost 10,000 valid international agreements and had proved itself in its 60 years of relations with foreign countries to be a bona fide partner of irreproachable honesty in the fulfilment of its obligations. The conscientious discharge of obligations deriving from generally recognized principles of international law was, indeed, a requirement of the Constitution of the USSR and of a recent law concerning the conclusion, implementation and denunciation of international agreements.

It was to be regretted that there were forces in the modern world that were not interested in the loyal discharge of agreements designed to promote peace and security and that opposed detente and sought to stir up hatred among peoples. Those forces included the most reactionary and inveterate circles of imperialism bound to the military-industrial complex. Among them were megalomaniac, petty bourgeois nationalists who sought to satisfy their great-Power, chauvinistic and hegemonistic ambitions by compacting with imperialism and militarism and recklessly drove their own peoples - and, with them, the peoples of their partners - along the road to disaster.

That being so, the provisions of the Convention which confirmed the inviolability of existing frontiers were most welcome, for they would serve as a powerful warning to those who harboured aggressive intentions against the territory of neighbouring countries and who based their foreign policy on the doctrine of racism and that of "living space". Incidentally, it was note-worthy that the

Convention had been adopted in the very building from which Hitler had proclaimed his infamous philosophy of Lebensraum and before which the forces that had destroyed Hitlerism and trampled underfoot the swastika as a symbol of aggression and encroachment on the territory of others paraded each month. It was also noteworthy that neither the Axis nor triple alliances had saved Hitler and those who had shared his views from condemnation by the peoples of the world or from the well-merited fate.

The Convention was, commendably, imbued with the spirit of peaceful co-existence and co-operation among States. Its Preamble stressed the special importance for the strengthening of peace and international security of consistent observance of general multilateral treaties which dealt with the codification and progressive development of international law and those whose object and purpose were of interest to the international community as a whole. It thereby gave further emphasis to the basic principles of international law concerning the prohibition of the use of force and all forms of infringement of the inalienable rights of all peoples set forth in the Charter of the United Nations. A further important point was that the Convention was based on a general understanding that succession of States in respect of treaties did not affect demilitarization of certain territories, freedom of navigation on international rivers and canals and in international straits, or various other international regimes.

His delegation was satisfied with the results of the work of the Conference and considered the Convention to represent a solid and substantial contribution to the cause of worldwide peace and justice. It was grateful to the President and the other officers of the Conference, the members of other delegations and the Secretariat for their co-operation and zeal in bringing the Conference to such a successful conclusion.

Mr. JAMARD (Iraq) speaking on behalf of the Group of Asian States, said that the adoption of the Convention marked a decisive phase in the codification of international law and the legal history of mankind. By its work, the Conference had ensured that international law, which had often served in the past as a cover for exploitation and crimes committed in its name, would henceforth protect States at the various stages in their history, particularly that of accession to independence.

The States for which he spoke wished to express their thanks to the Austrian Government and people for their hospitality and to the International Law Commission, the officers of the Conference, and all the other persons who had contributed to the successful outcome of the proceedings.

Tribute to the memory of President Jomo Kenyatta of Kenya

Mr. YACOUBA (Niger), speaking as the Chairman of the Group of African States, said that it was with the deepest regret that he had to inform the Conference of the death of President Jomo Kenyatta of Kenya. He would be grateful if arrangements could be made for the payment by the Conference of an appropriate tribute to that great leader of Africa.

Mr. MAHUNDA (Tanzania) said he supported the request by the representative of Niger.

Sir Ian SINCLAIR (United Kingdom) said that he spoke for the Group of Western European and Other States and for the United Kingdom as a member of the Commonwealth in mourning the passing of a most noble son of Africa who had struggled for years in defence of the interests of Kenya and of Africa as a whole. His delegation wished to express its condolences to the delegation of Kenya.

Mr. JAMARD (Iraq), speaking on behalf of the Group of Asian States, said that he had been deeply moved by the announcement made by the Chairman of the Group of African States and wished to express his condolences to the members of that Group and to the delegation of Kenya in particular. Mr. Kenyatta had been a great leader of Africa and it was he who had laid the foundations of the struggle for independence in that continent.

On the proposal of the President, the Conference observed a minute's silence in tribute to the memory of President Jomo Kenyatta of Kenya.

The meeting rose at 1.10 p.m.

UNITED NATIONS

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UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

Resumed session

PROVISIONAL SUMMARY RECORD OF THE FIFTEENTH MEETING

held at the Neue Hofburg, Vienna,
on Tuesday, 22 August 1978, at 3.30 p.m.

President: Mr. ZEMANEK (Austria)

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N.B. Participants wishing to have corrections to this provisional summary record incorporated in the final record of the meeting are requested to submit them in writing, preferably on a copy of the record itself, to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva, as soon as possible and not later than 30 September 1978.

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TRIBUTE TO THE MEMORY OF MR. JOMO KENYATTA, PRESIDENT OF KENYA (continued)

The PRESIDENT invited the Chairmen of the various regional groups to pay a tribute to the memory of Mr. Jomo Kenyatta, President of Kenya.

Mr. YACOUBA (Niger), speaking on behalf of the African Group, expressed the condolences of the African Group to the delegation of Kenya and, through it, to the Government and people of Kenya on the occasion of the death of the great African leader, Jomo Kenyatta. For the African States, he had been the symbol of the struggle for independence, since he had been one of the first sons of Africa to dare to tackle a situation inimical to the interests of the African States. He had also been a symbol because, as a result of his effective and dynamic leadership, Kenya had the privilege of being one of the most stable countries in Africa. All those who belonged to the African Group had been deeply affected by his death, for he had been a great man with whom they would like to identify.

Mr. GUTIERREZ EVIA (Mexico), speaking on behalf of the Latin American Group, expressed the deep sense of sorrow felt by the Latin American Group on the announcement of the death of President Kenyatta, who had been an eminent head of State, a great African leader and a man of world stature. With his patriotism, extensive knowledge, determination, understanding and good nature, he had worked untiringly for the well-being and development not only of his own people, but also of all those aspiring to freedom and independence. The maintenance of peace had been his main objective throughout his fruitful life.

Mrs. SLAMOVA (Czechoslovakia), speaking on behalf of the Group of Eastern European States, associated herself with the condolences presented to the delegation of Kenya on the occasion of the death of the great politician, President Kenyatta. Through the President of the Conference, she requested the delegation of Kenya to convey the condolences of the Group of Eastern European States to the people and Government of Kenya. In Eastern Europe, President Kenyatta would be remembered as one who had fought hard for the people of his country and for the peoples of the other African countries as well.

Sir Ian SINCLAIR (United Kingdom), speaking on behalf of the Group of Western European and Other States, said that, with the death of Mr. Jomo Kenyatta, Africa and, indeed, the entire world, had lost a great statesman whose influence had extended far beyond Kenya and Africa. It could be said that, by his courage, firmness, understanding and wisdom, he had forged a nation. For his own people, he had been a patriarch and, for other peoples, he had symbolized Africa.

The Group of Western European and Other States expressed its deepest sympathy to the Kenyan delegation and, through it, to the people and Government of Kenya and to all the other African delegations.

Mr. BRECKENRIDGE (Sri Lanka), speaking on behalf of the Group of Non-Aligned Countries, said it had been with great sorrow that those countries had learned of the death of President Kenyatta. They would remember with pride the way in which he had led his people and the place which he had occupied in the community of nations. The Group of Non-Aligned Countries expressed its condolences to the delegation of Kenya, and, through it, to the Government and people of Kenya.

The PRESIDENT requested the delegation of Kenya to convey to the people and Government of Kenya the condolences expressed during the proceedings.

Mr. MUDHO (Kenya) thanked the Conference for the moving tribute it had paid to the memory of the first President and founder of the Republic of Kenya. He would convey the condolences of the various regional groups to Mr. Kenyatta's family and to the people and Government of Kenya.

All Kenyans were now mourning the sudden passing away of a man who had spent his entire adult life in the service of his people, his country and all mankind, who were the beneficiaries of his great vision and spirit of sacrifice. Despite everything he had done for Kenya and everything he had given to it, all he had asked of his countrymen in return was that they should love one another and learn to cherish peace, progress and stability. He had exhorted every Kenyan to be proud of his country and to forgive, but not forget, the past, an appeal to which there had been a broad response. He had enjoyed the admiration, affection and respect of every Kenyan. He (Mr. Mudho) expressed the hope that what President Kenyatta had always wanted for his country - namely, continued peace, prosperity and stability in a strong and united State from which discrimination was absent, in the true spirit of the motto which President Kenyatta had given his country: "Harambee" - would be realized.

The meeting was suspended at 3.45 p.m. and resumed at 3.55 p.m.

ADOPTION OF A CONVENTION AND OTHER INSTRUMENTS DEEMED APPROPRIATE AND OF THE FINAL ACT OF THE CONFERENCE (item 12 of the agenda) (continued)

Adoption of the Convention as a whole

The PRESIDENT invited representatives who wished to do so to make general statements on the Convention adopted at the preceding meeting or to explain their votes.

Mr. PEREZ CHIRIBOGA (Venezuela) said that his delegation had voted in favour of the Convention as a whole, for it marked an important stage in the development of public international law. His Government would still have to decide, at the appropriate time, whether it could sign the Convention.

His delegation had been able to vote in favour of the Convention because of the existence of draft article 13, entitled "Questions relating to the validity of a treaty", and because of the International Law Commission's interpretation of article 11, relating to boundary régimes. In paragraph 20 of the commentary to that article, the International Law Commission had stated, with regard to its formulation, that: "In accepting this formulation the Commission underlined the purely negative character of the rule, which goes no further than to deny that any succession of States simply by reason of its occurrence affects a boundary established by a treaty or a boundary régime so established. As already pointed out it leaves untouched any legal ground that may exist for challenging the boundary, such as self-determination or the invalidity of the treaty, just as it also leaves untouched any legal ground of defence to such a challenge. The Commission was also agreed that this negative rule must apply equally to any boundary régime established by a treaty, whether the same treaty as established the boundary or a separate treaty."

Without article 13 and that interpretation of article 11, which left aside any such legal grounds that might exist for challenging a boundary, such as the invalidity of the treaty or of an arbitral award, his delegation would not have been able to vote in favour of the Convention.

Mr. HERNDL (Austria) welcomed the fact that the Conference had adopted, virtually unanimously, another Convention with which Vienna's name would be associated. Apart from some minor amendments, the text adopted was basically the same as the draft of the International Law Commission; that was proof of the

high quality of the Commission's work. It was now time to look to the future, to try to forget the questions of colonialism and imperialism raised during the discussions and to seek to apply the Convention effectively.

The International Law Commission had rightly given priority to recent practice, which was particularly abundant on the subject and which tended towards the reversal of older practice. The Convention clearly showed the relationship between the "clean slate" rule and the principle of continuity. The application of that rule was justified in the case of newly independent States because of the often difficult circumstances in which they had attained independence. Now that the process of decolonization was nearing its end, it was the principle of continuity, as embodied in the Convention, that would henceforth apply to States, in accordance with the two basic principles underlying the Convention and general international law, namely, the principle of pacta sunt servanda and the principle of good faith.

Although it had voted in favour of the Convention, his delegation was not entirely satisfied with all its provisions and, in particular, those to which it had submitted amendments. For example, it would have preferred account to be taken, in article 19, of the amendment it had submitted concerning the further reservations which a newly independent State coulf formulate to a multilateral treaty.

His delegation welcomed the outcome of the discussion of the issue of the settlement of disputes, despite the fact that the ideal solution - the compulsory judicial settlement of disputes - had not been adopted. The Convention nevertheless contained a mechanism for the settlement of disputes that was stricter than that of other Conventions; there was thus reason to hope that the international community was moving towards the compulsory judicial settlement of disputes.

His delegation had declared its support for the principle of permanent sovereignty over natural resources and had therefore voted in favour of article 12 bis, for it was convinced that States must have full sovereignty over their natural resources. At one point in its history, Austria had had to pay dearly to recover its sovereignty over its natural resources. Article 12 bis had the merit of treating the principle of permanent sovereignty over natural resources as an element of international law.

Mr. FONT-BLAZQUEZ (Spain) welcomed the fact that, owing to its perseverence, the Conference had succeeded in adopting the text of the Convention on Succession of States in respect of Treaties. The difficulties experienced by his delegation related solely to articles 30 and 33. Article 30 would probably create more difficulties than it would solve. The position of his delegation with regard to article 33 was reflected in the summary records of the relevant meetings. Without prejudice to the position of the Spanish Government with respect to the signature and ratification of the Convention, his delegation could have voted without hesitation in favour of the Convention, while explaining its objections to articles 30 and 33; in the event, however, it had finally received instructions to vote for its adoption.

Mr. RITTER (Switzerland) said that, although his delegation had been obliged to abstain in the vote on the Convention as a whole, no dramatic significance should be attached to its decision to do so. The value of the work done by the International Law Commission and the Conference should not be underestimated. In that respect, he referred to a constructive provision, namely, article 7, which allowed for greater flexibility in the application of the Convention. Articles 12 and 12 bis made the Convention acceptable to a large number of delegations. For his own delegation, the main problem, which had compelled it to abstain in the vote, lay in article 33. The International Law Commission, in its commentary to article 33, had shown that the "clean slate" rule dominated the practice of public international law, but had proposed a deviation from that rule in the case of new States other than newly independent States. The Conference had followed the Commission's suggestion in that regard, but, in doing so, it had introduced a twofold duality into contemporary international law: on the one hand, newly independent States were distinguished from other new States and on the other hand, in the case of a new State, general international law was distinguished from the law laid down in the Convention.

It was normal for a codification conference to adopt rules that departed from public international law, but the present Convention departed from precedent: although, in earlier codification conventions, States had adopted new rules which they then applied to themselves, the present Conference had taken decisions which would affect the future of States that did not yet exist. His delegation

entertained doubts concerning the possibilities of applying article 33 in practice. Either the new State would not ratify the Convention and would apply general international law, and hence solutions that ran counter to those envisaged in the Convention, or it would ratify the Convention and style itself a newly independent State. As there were no criteria for distinguishing newly independent States from other new States, there would be nothing to prevent new States from acting in that manner, even though the Conference had deleted from the draft the virtually explicit invitation to States, made in paragraph 3 of article 33, to take such action.

It might also happen that a new State which had ratified the Convention subsequently realized that it would prefer not to apply the rule of continuity in certain cases. It could then plead that, during the period which had elapsed between its attainment of independence and ratification of the Convention, it had applied general international law terminating the application of the treaties of the predecessor State, and that the Convention could not re-establish the rule of continuity with retroactive effect. In other words, the sole foundation for the principle of continuity was the consent of States, and it would have been preferable for the Convention to have made that clear instead of imposing the principle of continuity as a general rule. His comments were not intended as a criticism of the Convention, but the legal implications of the solution adopted in the Convention were so far-reaching that the Swiss Government would have to study them very thoroughly before it could sign and ratify the Convention.

He noted that Switzerland did not have the status of either predecessor or successor State; by virtue of its links with the outside world, its position was typically that of a third State and it consequently attached more importance than many other States to continuity in treaty relations. It hoped, therefore, that the rule of continuity would continue to be the solution of the future, but that it would be based on consent, in keeping with the policy which the Swiss Government had followed to its own satisfaction and to that of third countries during the period of decolonization, and which had been reflected in the acceptance of declarations of continuity by new States or the negotiation of continuity agreements.

He concluded by stating that the Swiss delegation had striven for juridical exactitude during the work of drafting the Convention and that the positions it had espoused in submitting proposals itself or in supporting proposals put forward by other delegations had been motivated entirely, to the exclusion of all other considerations, by its concern to ensure such exactitude.

Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that the unflagging efforts of the International Law Commission had now been crowned by the adoption of a Convention which represented a resounding success both for the Commission and for all States Members of the United Nations which strove for the progressive development of international law and contributed to the struggle against colonialism and imperialism. His delegation congratulated the Commission on the fact that its draft, after thorough consideration, had been adopted with very few changes. The Conference had codified the basic elements of existing international law and had contributed to the progressive development of international law. International treaties, which were the instruments of peaceful relations between States, should enable States to work for peace on the basis of justice and equality. Those were in fact the two criteria underpinning the Convention, which was associated with the principles of self-determination, of the permanent sovereignty of States over their natural resources and of the right of States freely to choose their policies and to conduct their relations, particularly treaty relations, with other States.

The Convention would enable States to use multilateral treaties to better advantage in the interests of the development of international law and of world peace and security. The Convention contained a number of provisions based on recognized rules of international law, such as the inviolability of frontiers, and the rule of continuity, which reflected contemporary reality so far as succession of States was concerned. The reinforcement of those principles by codification would make it possible for States to strive for world peace and security and to improve international relations on the basis of respect for third States and for the freedom of all peoples.

His delegation welcomed the provisions on the settlement of disputes, which showed that most States had not been in favour of adopting a compulsory procedure, and considered that the article adopted on the question went as far as it was possible to go at the present stage.

Mr. MARESCA (Italy) said that his delegation had voted in favour of the Convention, since it met a need within the legal order. The process of decolonization had given new life to the legal régime of the succession of States and had thus made it necessary to vest that régime with the legal certainty of written rules. The Convention on Succession of States in respect of Treaties was the natural and necessary sequel to the Convention on the Law of Treaties, which had left a gap. The two Conventions combined in defining the law of treaties. The main feature of the Convention just adopted by the Conference was the equitable balance which it struck between two different and even contradictory principles, that of the "clean slate" and that of continuity. The former principle concerned newly independent States, while the latter applied to everything that was still rooted in past realities. His delegation fully appreciated the reference in the preamble to customary law, which filled unavoidable gaps and clarified points that might otherwise remain obscure.

It was naturally impossible for the Convention to satisfy all the delegations which had had to make sacrifices. His delegation, for instance, would have liked the Conference to adopt more far-reaching rules, but had had to agree to a compromise; it would have welcomed the establishment of a comprehensive procedure for the settlement of disputes, in other words, one which made provision for recourse to the International Court of Justice. Nevertheless, the provisions which had been adopted or that subject and included in the body of the Convention were preferable to the Protocols adopted in the past.

He was glad to see that the Convention would bear the name of Vienna, thus continuing a long-standing tradition dating back to the Congress of Vienna of 1815, which had laid down rules that were still in force. He concluded by expressing the hope that other Conventions would also see the light of day in Vienna, the capital of international law.

Mr. NAKAGAWA (Japan) said that, despite the reservations which his delegation had expressed in regard to certain provisions, it considered that the Convention as a whole contributed to the progressive development and codification of international law and had therefore voted in favour of its adoption.

Mr. DOGAN (Turkey) said he regretted that he had been unable to associate his delegation with the great majority of delegations which had voted in favour of the text of the Convention as a whole. He hoped, however, that the Turkish Government would eventually be able to overcome the legal and administrative difficulties created for it by certain provisions, particularly those of article 33 and article 2.

Mr. ABOU-ALI (Egypt) said that he had voted in favour of the Convention because, in his opinion, it marked further progress in the codification and progressive development of international law and it struck a proper balance between the two principles on which international relations were founded - the "clean slate" principle and the principle of continuity.

Mr. ARIFF (Malaysia) said that, he too, had voted in favour of the Convention, because he considered it very useful. He thanked the Austrian Government for its welcome and, in addition, all those who had enabled the Conference to achieve its purpose.

Mr. PERE (France) thanked all those who had contributed to the success of the Conference and expressed his gratitude for the welcome extended to the participants by the people of Austria and the city of Vienna.

His delegation had, with great regret, abstained during the vote on the Convention. From the outset his Government had questioned the advisability and feasibility of codifying in the form of a convention such a delicate matter as succession of States in respect of treaties. Nevertheless, heeding the legitimate concerns of the developing and the newly independent countries, it had agreed to contribute to the Conference and to provide it with its juridical and practical experience. Unfortunately, his delegation had, for purely juridical reasons, been unable to agree to certain provisions of the text of the Convention, particularly

articles 2, 12 bis, 33 and 34 and some of the final clauses, and it had therefore been unable to vote in favour of the Convention.

However, its attitude towards the Convention would not of course prevent his Government from considering with an open mind and with understanding any cases of succession of States in which it might be involved.

Draft resolutions submitted directly to the plenary Conference

Tribute to the Special Rapporteurs and the Expert Consultant (A/CONF.80/L.2)

Draft resolution A/CONF.80/L.2 was adopted by acclamation.

Tribute to the International Law Commission (A/CONF.80/L.3)

Draft resolution A/CONF.80/L.3 was adopted by acclamation.

Tribute to the people and to the Federal Government of Austria (A/CONF.80/L.4)

Draft resolution A/CONF.80/L.4 was adopted by acclamation.

Mr. HERNDL (Austria) thanked the sponsors of draft resolution A/CONF.80/L.4 and the States that they represented. The Austrian Government was proud to have acted as host to the Conference in Vienna and took pleasure in the climate of understanding which had marked its work throughout. He expressed his gratitude to delegations and to the Secretariat for contributing so much to the success of the Conference.

Adoption of the Final Act of the Conference (A/CONF.80/26)

Mr. YASSEEN (Chairman of the Drafting Committee) said that in paragraph 25 of the document on methods of work and procedures adopted by the Conference that might be applicable to its resumed session (A/CONF.80/17), of which the Conference had taken note at its 10th meeting, on 31 July 1978, it had been suggested that the preparation of the Final Act of the Conference could be left to the Drafting Committee. At its 24th meeting, on 21 August 1978, the Drafting Committee had adopted the draft Final Act, which was now before the Conference in document A/CONF.80/26.

The document described in chronological fashion, the background to and work of the Conference, with a brief indication of its structure and methods of work and a list of the States which had participated in the Conference and of those which had been represented by observers. It also mentioned the United Nations Council for Namibia and the international organizations and other bodies represented at the Conference. Lastly, it indicated the membership and the titles of the subsidiary organs established by the Conference and the names of the officers of the Conference and of its organs. Naturally, it emphasized the outcome

of the endeavours of the Conference, in other words, the adoption of the Vienna Convention on Succession of States in respect of Treaties.

The Final Act, to which the resolutions adopted by the Conference were annexed, could be signed by the representatives of the States participating in the Conference at the same time as the Convention, on the day on which the latter was opened for signature.

The Final Act of the Conference was adopted.

Sir Ian SINCLAIR (United Kingdom), speaking on behalf of the Group of Western European and Other States, expressed gratitude to the President of the Conference, to the Chairman of the Committee of the Whole and also its Vice-Chairman, who had presided over the Informal Consultations Group, and to the Rapporteur and the members of the Secretariat. He paid a tribute to the International Law Commission, which could claim to have furthered the Convention, and thanked the Austrian Government for its generous hospitality.

Mr. GIL-MASSA (Mexico), speaking on behalf of the Latin American Group, said that he had voted in favour of the Convention, which he considered to be a useful instrument in the codification and progressive development of international law. He congratulated the President of the Conference, who had enabled the Conference to bring to a successful conclusion work that had often proved difficult, and also thanked the Chairman of the Committee of the Whole, the other officers and the Expert Consultant and the Secretariat. He also paid a tribute to the International Law Commission and thanked the Austrian Government for its welcome.

Mrs. SLAMOVA (Czechoslovakia), speaking on behalf of the Group of Eastern European States, said that she, too, wished to congratulate the President of the Conference and the officers of the Committee of the Whole. The Conference could not have been successful in its work without the excellent draft prepared by the International Law Commission; she thanked all members of the Commission, especially those who had participated in the Conference. Owing to the endeavours of the Drafting Committee and of the informal consultations group, and to the spirit of co-operation which had prevailed, the Conference had been able to carry out an extremely complex task and to adopt an excellent Convention which she hoped would be acceptable to all States.

Mr. YACOUBA (Niger), speaking on behalf of the African Group, associated himself with the tributes voiced by the representatives of the other

regional groups. He took pleasure in the success of the Conference, to which the African Group had contributed by the positive attitude which it had displayed throughout what had sometimes been difficult discussions. The Convention marked an important stage in the efforts to achieve a more equitable and more humane codification of international law, since it enabled the newly independent States to free themselves from any liability deriving from commitments into which they had not themselves entered. He wished to commend the International Law Commission and to express his gratitude to the people and the Government of Austria for their hospitality.

Mr. SETTE CÂMARA (Brazil), speaking as Chairman of the International Law Commission, thanked the Conference for having adopted a resolution that paid a tribute to the Commission. He expressed appreciation to Sir Humphrey Waldock, the previous Special Rapporteur, and went on to point out that once again the International Law Commission had demonstrated the excellence of its methods of work, since the Conference had adopted most of the proposals in the basic text and had departed from it simply to add provisions that the Commission had not had the opportunity to consider, such as the provisions on the settlement of disputes.

The PRESIDENT thanked delegations for their kind words in his regard. He expressed his gratitude to the participants in the Conference and to the officials of the Secretariat, who had been the architects of the success of the Conference.

The meeting rose at 5.30 p.m.

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On 23 August 1978, before the signature of the Final Act, the delegations of Spain and Turkey informed the Secretariat that they were now authorized to approve the Convention.